SB

49

<TARGET><BILL>SB 49</BILL><SUBJECT>SB
49</SUBJECT><COMM>HFIN28</COMM></TARGET>

SB 49

Committee Binder

TABLE OF CONTENTS

1

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 49 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY SENATORS COGHILL, Olson, Kelly, Dyson, Micciche, Dunleavy, Giessel

REPRESENTATIVE Lynn

Amended: 4/9/13
Introduced: 2/15/13

A BILL

FOR AN ACT ENTITLED

"An Act relating to women's health services and defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

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

*** Section 1.** AS 47.07.030 is amended by adding a new subsection to read:

(g) The department shall make available to eligible recipients a program for women's health for the purpose of providing family planning services, health screening examinations, and related services.

*** Sec. 2.** AS 47.07 is amended by adding a new section to read:

Sec. 47.07.068. Payment for abortions. (a) The department may not pay for abortion services under this chapter unless the abortion services are for a medically necessary abortion or the pregnancy was the result of rape or incest. Payment may not be made for an elective abortion.

(b) In this section,

(1) "abortion" has the meaning given in AS 18.16.090;

(2) "elective abortion" means an abortion that is not a medically necessary abortion;

(3) "medically necessary abortion" means that, in a physician's objective and reasonable professional judgment after considering medically relevant factors, an abortion must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy;

(4) "serious risk to the life or physical health" includes, but is not limited to, a serious risk to the pregnant woman of

(A) death; or

(B) impairment of a major bodily function because of

(i) diabetes with acute metabolic derangement or severe end organ damage;

(ii) renal disease that requires dialysis treatment;

(iii) severe pre-eclampsia;

(iv) eclampsia;

(v) convulsions;

(vi) status epilepticus;

(vii) sickle cell anemia;

(viii) severe congenital or acquired heart disease, class IV;

(ix) pulmonary hypertension;

(x) malignancy if pregnancy would prevent or limit treatment;

(xi) kidney infection;

(xii) congestive heart failure;

(xiii) epilepsy;

(xiv) seizures;

(xv) coma;

(xvi) severe infection exacerbated by pregnancy;

(xvii) rupture of amniotic membranes;

(xviii) advanced cervical dilation of more than six

centimeters at less than 22 weeks gestation;

(xix) cervical or cesarean section scar ectopic implantation;

(xx) any pregnancy not implanted in the uterine cavity;

(xxi) amniotic fluid embolus; or

(xxii) another physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy that places the woman in danger of death or major bodily impairment if an abortion is not performed.

* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

WOMEN'S HEALTH PROGRAM UNDER STATE MEDICAID. The Department of Health and Social Services shall immediately prepare and submit to the United States Department of Health and Human Services, for approval in accordance with the provisions of 42 U.S.C. 1396a (Title XIX, Social Security Act), an amendment to the state plan consistent with AS 47.07.030, enacted by sec. 1 of this Act.

2

ALASKA STATE SENATE

Interim:
301 Santa Claus Lane
North Pole Plaza Mall Ste. 3B
North Pole, Alaska 99705
Phone: (907) 451-2063
Fax: (907) 451-2332

Session:
State Capitol, Room 11?
Juneau, Alaska 99801-1182
Phone: (907) 465-3719
Fax: (907) 465-3258

SENATOR JOHN COGHILL

SPONSOR STATEMENT

SSSB 49 am: "An Act relating to women's health services and defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

Sponsor Substitute to Senate Bill 49 ("SSSB 49") Sections 1 and 3 direct the department to establish a program for women's health for the purpose of providing family planning services, health screening examinations, and related services.

Sections 1 and 3 were submitted by Senator Gardner on the Senator Floor and received little to no analysis in committee. In contrast, Section 2 has gone through extensive review in the Senate Judiciary Committee and Senate Finance Committee.

Section 2 specifically brings clarity to the term "medically necessary abortion" for the purposes of making payments under Medicaid.

In 2001, the Alaska Supreme Court determined the state must pay for medically necessary abortions for participants in the Medicaid program.[1] Since 2001, the term "medically necessary abortion" has acquired a constitutional component of *unknown scope*. The relatively few Alaska cases involving abortion rights do not provide guidance as to how broadly the term "medically necessary abortion" is to be construed.

SSSB 49 answers that question. SSSB 49, based on recommendations and expert testimony from medical professionals, satisfies equal protection arguments by reasonably providing a definition for a "medically necessary abortion" based on neutral criteria directly related to the health care program (as it was required to do pursuant to the 2001 *Planned Parenthood* decision).

Please join Senator Coghill in supporting SSSB 49.

---

[1] See *State, Department of Health and Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001).

3

FEDERAL REGISTER

Vol. 75, No. 059

Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13535 of March 24, 2010

Title 3--

The President

Title3--

The President

Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act

Part IV

View PDF of Federal Register Print Version

75 FR 15599

DATE: Monday, March 29, 2010

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the "Patient Protection and Affordable Care Act" (Public Law 111-148), I hereby order as follows:

Section. 1. *Policy.* Following the recent enactment of the Patient Protection and Affordable Care Act (the "Act"), it is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment. The purpose of this order is to establish a comprehensive, Government-wide set of policies and procedures to achieve this goal and to make certain that all relevant actors--Federal officials, State officials (including insurance regulators) and health care

providers--are aware of their responsibilities, new and old.

The Act maintains current Hyde Amendment restrictions governing abortion policy and extends those restrictions to the newly created health insurance exchanges. Under the Act, longstanding Federal laws to protect conscience (such as the Church Amendment, *42 U.S.C. 300a-7*, and the Weldon Amendment, section 508(d)(1) of Public Law 111-8) remain intact and new protections prohibit discrimination against health care facilities and health care providers because of an unwillingness to provide, pay for, provide coverage of, or refer for abortions.

Numerous executive agencies have a role in ensuring that these restrictions are enforced, including the Department of Health and Human Services (HHS), the Office of Management and Budget (OMB), and the Office of Personnel Management.

Sec. 2. *Strict Compliance with Prohibitions on Abortion Funding in Health Insurance Exchanges.* The Act specifically prohibits the use of tax credits and cost-sharing reduction payments to pay for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered) in the health insurance exchanges that will be operational in 2014. The Act also imposes strict payment and accounting requirements to ensure that Federal funds are not used for abortion services in exchange plans (except in cases of rape or incest, or when the life of the woman would be endangered) and requires State health insurance commissioners to ensure that exchange plan funds are segregated by insurance companies inaccordance with generally accepted accounting principles, OMB funds management circulars, and accounting guidance provided by the Government Accountability Office.

I hereby direct the Director of the OMB and the Secretary of HHS to develop, within 180 days of the date of this order, a model set of segregation guidelines for State health insurance commissioners to use when determining whether exchange plans are complying with the Act's segregation requirements, established in section 1303 of the Act, for enrollees receiving Federal financial assistance. The guidelines shall also offer technical information that States should follow to conduct independent regular audits of insurance companies that participate in the health insurance exchanges. In developing these model guidelines, the Director of the OMB and the Secretary of HHS shall consult with executive agencies and offices that have relevant expertise in accounting [*15600] principles, including, but not limited to, the Department of the Treasury, and with the Government Accountability Office. Upon completion of these model guidelines, the Secretary of HHS should promptly initiate a rulemaking to issue regulations, which will have the force of law, to interpret the Act's segregation requirements, and shall provide guidance to State health insurance commissioners on how to comply with the model guidelines.

Sec. 3. *Community Health Center Program.* The Act establishes a new Community Health Center (CHC) Fund within HHS, which provides additional Federal funds for the community health center program. Existing law prohibitsthese centers from using Federal funds to provide abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), as a result of both the Hyde Amendment and longstanding regulations containing the Hyde language. Under the Act, the Hyde language shall apply to the authorization and appropriations of funds for Community Health Centers under section 10503 and all other relevant provisions. I hereby direct the Secretary of HHS to ensure that program administrators and recipients of Federal funds are aware of and comply with the limitations on abortion services imposed on CHCs by existing law. Such actions should include, but are not limited to, updating Grant Policy Statements that accompany CHC grants and issuing new interpretive rules.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect: (i) authority granted by law or Presidential directive to an agency, or the head thereof; or (ii) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at

law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees or agents, or any other person.

/S/ Barack Obama

THE WHITE HOUSE,

Washington, March 24, 2010.

[FR Doc. 2010-7154 Filed 3-26-10; 1:00 pm]

BILLING CODE 0000-00-X

4

National Right to Life

The complete text of the current Hyde Amendment

Public Law 111-8
H.R. 1105, Division F, Title V, General Provisions

SEC. 507. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term 'health benefits coverage' means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

SEC. 508. (a) The limitations established in the preceding section shall not apply to an abortion--

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

To go to the Abortion in Health Care Index, click here.
To go to the NRLC Home page, click here.
To go to the NRLC Legislative Action Center, click here.

Bill Text
112th Congress (2011-2012)
H.R.2055.ENR

H.R.2055

Consolidated Appropriations Act, 2012 (Enrolled Bill [Final as Passed Both House and Senate] - ENR)

(transfer of funds)

Sec. 501. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act. Such transferred balances shall be used for the same purpose, and for the same periods of time, for which they were originally appropriated.

Sec. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 503. (a) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation to the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government, except in presentation to the executive branch of any State or local government itself.

(b) No part of any appropriation contained in this Act or transferred pursuant to section 4002 of Public Law 111-148 shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

(c) The prohibitions in subsections (a) and (b) shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

Sec. 504. The Secretaries of Labor and Education are authorized to make available not to exceed $28,000 and $20,000, respectively, from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed $5,000 from the funds available for `Federal Mediation and Conciliation Service, Salaries and Expenses'; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed $5,000 from funds available for `National Mediation Board, Salaries and Expenses'.

Sec. 505. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state--

(1) the percentage of the total costs of the program or project which will be financed with Federal money;

(2) the dollar amount of Federal funds for the project or program; and

(3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Sec. 506. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion .

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion .

(c) The term `health benefits coverage' means the package of services covered by a managed care provider or organization pursuant to a contract or other arrangement.

Sec. 507. (a) The limitations established in the preceding section shall not apply to an abortion --

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure

by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term `health care entity' includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

Sec. 508. (a) None of the funds made available in this Act may be used for--

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term `human embryo or embryos' includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

Sec. 509. (a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive-congressional communications.

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

Sec. 510. None of the funds made available in this Act may be used to promulgate or adopt any final standard under section 1173(b) of the Social Security Act providing for, or providing for the assignment of, a unique health identifier for an individual (except in an individual's capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard.

Sec. 511. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with an entity if--

5

ALASKA STATE SENATE

Interim:
301 Santa Claus Lane
North Pole Plaza Mall Ste. 3B
North Pole, Alaska 99705
Phone: (907) 451-2063
Fax: (907) 451-2332

Session:
State Capitol, Room 119
Juneau, Alaska 99801-1182
Phone: (907) 465-3719
Fax: (907) 465-3258

SENATOR JOHN COGHILL

SECTIONAL ANALYSIS

SSSB 49 am: "An Act relating to women's health services and defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

Noteworthy: This bill was amended on the Senate Floor. *Amended Sections 1 and 3 were passed with little to no vetting or analysis*. Sections 1 and 3 were never discussed in any committee. The financial repercussions at the time of passage were unknown to the Senate. Section 2 of SSSB 49 has, in contrast, gone through *extensive review* in Senate Judiciary and Senate Finance.

Section 1: AS 47.07.030 is amended by adding a new subsection to read:

(g) The department of Health and Social Services shall make "family planning services", "health screening examination", and "related services" available to eligible persons.

Section 2: AS 47.07 is amended by adding a new section:

AS 47.07.068 shall read:

This section shall neutrally define "medically necessary abortions" for the purpose of making payments under Medicaid.

This section shall clearly distinguish between "medically necessary abortions" and "elective abortions."

Medicaid does not fund elective procedures (such as a facelift).

Medicaid also shall not fund elective abortions.

Medicaid only funds medically necessary procedures.

Medicaid shall only fund medically necessary abortions.

The definition was crafted after giving careful consideration to existing federal foundational thresholds found in the Hyde Amendment, the language in the 2001 "Planned Parenthood Case" (State, DHSS v. Planned Parenthood, 28 P.3d 904, 915 (Alaska 2001)), and the neutral, professional recommendations of medical experts.

(a) The department shall not pay for abortions unless the services are medically necessary or the pregnancy was the result of rape or incest. Payment shall not be made for elective abortions.

(b) (1) "Abortion" shall be as defined in AS 18.16.090.

(2) "Elective abortion" means an abortion that is not medically necessary.

(3) "Medically necessary abortion" means, in a physician's objective and reasonable professional judgment, after considering neutral medically relevant factors, that an abortion must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy;

(4) "Serious risk to the life or physical health" includes, but is not limited to, a serious risk to the pregnant woman of:

(A) death; or

(B) impairment of a major bodily function because of

(i-xxii) the conditions listed.

Section 3: The uncodified law of the State of Alaska is amended by adding a new section to read:

That a new "Women's Health Program" shall be established under Medicaid. The plan shall be consistent with Section 1.

6

GUTTMACHER INSTITUTE

STATE POLICIES IN BRIEF

As of FEBRUARY 1, 2014

State Funding of Abortion Under Medicaid

BACKGROUND: First implemented in 1977, the Hyde Amendment, which currently forbids the use of federal funds for abortions except in cases of life endangerment, rape or incest, has guided public funding for abortions under the joint federal-state Medicaid programs for low-income women. At a minimum, states must cover those abortions that meet the federal exceptions. Although most states meet the requirements, one state is in violation of federal Medicaid law, because it pays for abortions only in cases of life endangerment. Some states use their own funds to pay for all or most medically necessary abortions, although most do so as a result of a specific court order.

HIGHLIGHTS:

- 32 states and the District of Columbia follow the federal standard and provide abortions in cases of life endangerment, rape and incest.
  - 3 of these states also provide state funds for abortions in cases of fetal impairment.
  - 3 of these states also provide state funds for abortions that are necessary to prevent grave, long-lasting damage to the woman's physical health.
- 1 state provides abortions only in cases of life endangerment, in apparent violation of the federal standard.
- 17 states use state funds to provide all or most medically necessary abortions.
  - 4 of these states provide such funds voluntarily.
  - 13 of these states do so pursuant to a court order.

Advancing sexual and reproductive health worldwide through research, policy analysis and public education.

125 Maiden Lane
New York, NY 10038
212.248.1111
www.guttmacher.org
info@guttmacher.org

1301 Connecticut Avenue, N.W.
Washington, DC 20036
202.296.4012
www.guttmacher.org
policyweb@guttmacher.org

CONTINUED

STATE FUNDING OF ABORTION UNDER MEDICAID

STATE	GENERALLY FOLLOWS THE FEDERAL STANDARD, FUNDS IN CASES OF:		FUNDS ALL OR MOST MEDICALLY NECESSARY ABORTIONS
	Life Endangerment, Rape and Incest	Other Exceptions	
Alabama	X		
Alaska			Court order
Arizona			Court order
Arkansas	X		
California			Court order
Colorado	X		
Connecticut			Court order
Delaware	X		
Dist. of Columbia	X		
Florida	X		
Georgia	X		
Hawaii			Voluntarily
Idaho	X		
Illinois			Court order
Indiana	X	Physical health	
Iowa*	X	Fetal impairment	
Kansas	X		
Kentucky	X		
Louisiana	X		
Maine	X		
Maryland			Voluntarily
Massachusetts			Court order
Michigan	X		
Minnesota			Court order
Mississippi	X	Fetal impairment	
Missouri	X		
Montana			Court order
Nebraska	X		
Nevada	X		
New Hampshire	X		
New Jersey			Court order
New Mexico			Court order
New York			Voluntarily
North Carolina	X		
North Dakota	X		
Ohio	X		
Oklahoma	X		
Oregon			Court order
Pennsylvania	X		
Rhode Island	X		
South Carolina	X		
South Dakota	†		
Tennessee	X		
Texas	X		
Utah	X	Physical health	
Vermont			Court order
Virginia	X	Fetal impairment	
Washington			Voluntarily
West Virginia			Court order
Wisconsin	X	Physical health	
Wyoming	X		
TOTAL	32+DC		17

* The Iowa governor must approve any abortion paid for by the Medicaid program.

† State only pays for abortions when necessary to protect the woman's life.

CONTINUED

FOR MORE INFORMATION:

For information on state legislative and policy activity, click on Guttmacher's Monthly State Update, for state-level policy information see Guttmacher's State Policies in Brief series, and for information and data on reproductive health issues, go to Guttmacher's State Center. To see state-specific reproductive health information go to Guttmacher's Data Center, and for abortion specific information click on State Facts About Abortion. To keep up with new state relevant data and analysis sign up for the State News Quarterly Listserv.

Boonstra HD, Insurance coverage of abortion: beyond the exceptions for life endangerment, rape and incest. *Guttmacher Policy Review*, 16(3):2–8.

Sonfield A and Gold RB, *Public Funding for Family Planning, Sterilization and Abortion Services, FY1980–2010*. New York: Guttmacher Institute, 2012.

Kacanek D, et al., Medicaid funding for abortion: providers' experiences with cases involving rape, incest and life endangerment. *Perspectives on Sexual and Reproductive Health*, 42(2):79–86.

Henshaw SK et al., *Restrictions on Medicaid Funding for Abortions: A Literature Review*. New York: Guttmacher Institute, 2009.

Boonstra HD, The impact of government programs on reproductive health disparities: three case studies. *Guttmacher Policy Review*, 11(3):6–12.

Sonfield A, Alrich C and Gold RB, Public funding for family planning, sterilization and abortion services, FY 1980–2006. *Occasional Report*, New York: Guttmacher Institute, 2008, No. 38.

Boonstra HD, The heart of the matter: public funding of abortion for poor women in the United States. *Guttmacher Policy Review*, 10(1):12–16.

7

28 P.3d 904
(Cite as: 28 P.3d 904)

P

Supreme Court of Alaska.
STATE of Alaska, DEPARTMENT OF HEALTH & SOCIAL SERVICES, Karen Perdue, Commissioner, Appellant,
v.
PLANNED PARENTHOOD OF ALASKA, INC., Jan Whitefield, M.D., and Susan Lemagie, M.D., Appellees.

No. S-9109.
July 27, 2001.

Two medical doctors and an abortion provider filed a complaint against the Department of Health and Social Service (DHSS), seeking to enjoin enforcement of Department regulation that denied funding for medically necessary abortions, and requesting declaratory relief. The Superior Court, Third Judicial District, Sen K. Tan, J., granted summary judgment in favor of plaintiffs and permanently enjoined the Department from enforcing the regulation. Department appealed. The Supreme Court, Fabe, C.J., held that: (1) regulation violated Alaska's constitutional guarantee of equal protection, and (2) separation of powers doctrine does not preclude a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy.

Affirmed.

West Headnotes

[1] Appeal and Error 30 ⟹893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases

Appeal and Error 30 ⟹895(2)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k895 Scope of Inquiry
30k895(2) k. Effect of Findings Below. Most Cited Cases

Supreme Court will review a grant of summary judgment de novo, exercising its 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.

[2] Appeal and Error 30 ⟹840(3)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k840 Review of Specific Questions and Particular Decisions
30k840(3) k. Review of Constitutional Questions. Most Cited Cases

Appeal and Error 30 ⟹856(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k851 Theory and Grounds of Decision of Lower Court
30k856 Grounds for Sustaining Decision Not Considered
30k856(1) k. In General. Most Cited Cases

On questions of constitutional law, Supreme Court will apply its independent judgment, and may affirm the superior court on any ground supported by the record.

[3] Constitutional Law 92 ⟹3552

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)5 Social Security, Welfare, and Other Public Payments
92k3548 Medical Assistance
92k3552 k. Abortion Funding. Most Cited Cases
(Formerly 92k242.3(1))

Health 198H ⚖480

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

State regulation denying Medicaid funding for medically necessary abortions, except for pregnant women at risk of dying or pregnant from rape or incest, violates Alaska's constitutional guarantee of equal protection by providing medically necessary care to all indigents except women who need abortions; once the State undertook to fund medically necessary services for poor Alaskans, it could not selectively exclude women from that program merely because the threat to their health arose from pregnancy, which would affect their constitutional right to reproductive freedom, despite state's interest in providing healthcare to women who carry pregnancies to term and in protecting the fetus. Const. Art. 1, § 1; Alaska Admin. Code title 7, § 43.140.

[4] Constitutional Law 92 ⚖3043

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)5 Scope of Doctrine in General
92k3038 Discrimination and Classification
92k3043 k. Statutes and Other Written Regulations and Rules. Most Cited Cases
(Formerly 92k209)

Constitutional Law 92 ⚖3059

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)6 Levels of Scrutiny
92k3050 k. In General. Most Cited Cases
(Formerly 92k209)

In analyzing a challenged law under Alaska's equal protection provision, Supreme Court must first determine what level of scrutiny to apply, using Alaska's "sliding scale" standard, the Court must next examine the State's interests served by the challenged regulation and determine whether the burden placed on constitutional rights by the regulation is minimal, or whether the objective degree to which the challenged legislation tends to deter exercise of constitutional rights is significant and cannot survive constitutional challenge absent a compelling state interest, and if the State has shown that its interests justify burdening the rights of citizens, the Court must finally determine whether State has demonstrated 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. Const. Art. 1, § 1.

[5] Constitutional Law 92 ⚖3062

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)6 Levels of Scrutiny
92k3059 Heightened Levels of Scrutiny
92k3062 k. Strict Scrutiny and Compelling Interest in General. Most Cited Cases
(Formerly 92k213.1(1))

Constitutional Law 92 ⚖3766

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)18 Privacy and Sexual Matters
92k3766 k. Birth Control and Abortion. Most Cited Cases
(Formerly 92k225.1)

A regulation that affects the constitutional right to reproductive freedom, or selectively denies a benefit to those who exercise a constitutional right, is subject to the most searching judicial scrutiny, that is, "strict scrutiny" in analyzing the regulation under Alaska's equal protection provision. Const. Art. I, § 1.

[6] Health 198H ⚖473

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk473 k. In General. Most Cited Cases
(Formerly 356Ak241)

Government agency is constitutionally bound to apply neutral criteria in allocating health care benefits to poor Alaskans, even if considerations of expense, medical feasibility, or the necessity of particular services otherwise limit the health care it provides. Const. Art. I, § 1.

[7] Constitutional Law 92 ⚖3552

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)5 Social Security, Welfare, and Other Public Payments
92k3548 Medical Assistance
92k3552 k. Abortion Funding. Most Cited Cases
(Formerly 92k242.3(1))

Health 198H ⚖480

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

State regulation denying Medicaid funding for medically necessary abortions, except for pregnant women at risk of dying or pregnant from rape or incest, fails equal protection analysis under any standard, given that 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 in the state. Const. Art. I, § 1; Alaska Admin. Code title 7, § 43.1-0.

[8] Constitutional Law 92 ⚖3006

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)2 Relationship to Similar Provisions
92k3006 k. Federal/State Cognates. Most Cited Cases
(Formerly 92k213.1(2))

Federal rational basis review for equal protection analysis is a less rigorous standard than Alaska's rational basis review. U.S.C.A. Const.Amend. 5; Const. Art. I, § 1.

[9] Constitutional Law 92 ⚖2453

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)1 In General
92k2453 k. Determination of Constitutionality of Actions of Other Branches in General. Most Cited Cases
(Formerly 92k67)

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.

[10] Constitutional Law 92 ⚖2516(1)

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2519 Particular Issues and Applica-

tions

92k2516 Health
92k2516(1) k. In General. Most Cited Cases
(Formerly 92k70.1(12))

Separation of powers doctrine does not preclude a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy, even if legislature's appropriations power underlies the funding.

111 Constitutional Law 92 ⟹2330

92 Constitutional Law
92XX Separation of Powers
92XX(A) In General
92k2330 k. In General. Most Cited Cases
(Formerly 92k50)

Separation of powers doctrine and its complimentary doctrine of checks and balances are implicit in the Alaska Constitution.

*905 Lisa M. Kirsch, Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellant.

Christine Schlauss, Suddock & Schlauss, Cooperating Counsel to the Alaska Civil Liberties Union, Anchorage, and Louise Melling, Jody Yetzer, Talcott Camp, and Jennifer Dalven, ACLU Foundation, Reproductive Freedom Project, New York, NY, for Appellees.

Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Amicus Curiae The Alaska State Legislature.

Jeffrey D. Trout, Juneau, and Paul Benjamin Linton, Northbrook, IL, for Amicus Curiae United Families International.

Susan Orlansky, Feldman & Orlansky, Anchorage, Karen E. Katzman, Sheila S. Boston, and Dina L. Bakst, Kaye Scholer Fierman Hays & Handler, LLP, and Martha F. Davis and Yolanda S. Wu, NOW Legal Defense and Education Fund, New York, NY, for Amicus Curiae NOW Legal Defense and Education Fund.

Before FABE, Chief Justice, MATTHEWS, EASTAUGH, BRYNER, and CARPENETI, Justices.

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" [FN1] -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. [FN2]

FN1. AS 47.07.010.

FN2. *See Committee to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252, 172 Cal.Rptr. 866, 625 P.2d 779 (1981); *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387 (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 (1982); *New Mexico Right to Choose/NARAL v. Johnson*, 126 N.M. 788, 975 P.2d 841 (1998), *cert. denied*, 526 U.S. 1020, 119 S.Ct. 1256, 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 (1993); *but see Rancho R. v. State, Agency for Health Care Admin.*, 790 So.2d 1036 (Fla.2001); *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166 (1992); *Rosie J. v. North Carolina Dep't of Human Resources*, 347 N.C. 247, 491 S.E.2d 535 (1997); *Hope v. Perales*, 83 N.Y.2d 563, 611 N.Y.S.2d 811, 634 N.E.2d 183 (1994); *Fischer v. Department of Pub. Welfare*, 509 Pa. 293, 502 A.2d 114 (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.*, No. CV1999014614 (Ariz.Super. May 23, 2000); *Doe v. Maher*, 40 Conn.Supp. 394, 515 A.2d 134 (1986); *Roe v. Harris*, NO. 96977 (Idaho Dist. Feb. 1, 1994); *Doe v. Wright*, No. 91-CH-1958 (Ill.Cir. Dec. 2, 1994); *Clinic for Women v. Humphreys*, No. 49D12-9908-MI-1137 (Ind.Super. Oct. 18, 2000); *Jeannette R. v. Ellery*, No. BDV-94-811 (Mont.Dist. May 19, 1995); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon*, 63 Or.App. 41, 663 P.2d 1247 (1983), *aff'd on other grounds*, 297 Or. 562, 687 P.2d 785 (1984) (declining to reach constitutional issue); *Low-Income Women of Texas v. Bost*, 38 S.W.3d 689 (Tex.App.2000); *Doe v. Calavi*, No. S81-84CnC (Vt.Super. May 23, 1986); *but see Doe v. Childers*, No. 94C102183 (Ky.Cir. Aug. 7, 1995).

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 *906 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." [FN3] 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." [FN4] 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." [FN5] 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." [FN6] 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.

FN3. *Myers*, 172 Cal.Rptr. 866, 625 P.2d at 780.

FN4. *Id.*

FN5. *Id.*

FN6. *Id.*

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.[FN7] Medicaid is a comprehensive health care program designed to provide medical assistance for all eligible poor persons*907 in the state.[FN8] 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.[FN9] 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.

FN7. *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 in-

eligible 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 47.290(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.

FN8. *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 (1982) (discussing history of Hyde Amendment).

FN9. 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.

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 coma-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 emboli. 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," 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.

FN10. *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 969 (Alaska 1997).

FN11. 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.

*908 III. *STANDARD OF REVIEW*

[1][2] 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." [FN12] On questions of constitutional law, we also apply our independent judgment.[FN13] We may affirm the superior court on any ground supported by the record.[FN14]

FN12. *M.C. v. Northern Ins. Co. of N.Y.*, 1 P.3d 673, 674-75 (Alaska 2000).

FN13. *See Rollins v. State, Dep't of Revenue, Alcoholic Beverages Control Bd.*, 991 P.2d 202, 206 (Alaska 1999).

FN14. *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).

IV. *DISCUSSION*

A. The Challenged Regulation Violates Equal Protection.

[3] 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." [FN15] 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. [FN16] Although other courts' decisions have rested on a variety of state constitutional provisions, including equal protection, [FN17] constitutional equal-rights-for-women clauses, [FN18] due process, [FN19] and privacy, [FN20] the underlying logic has been the same in decision after decision: "[W]hen 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." [FN21] 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 *909 providing medical care, the manner in which it dispenses benefits is subject to constitutional limitations.' " [FN22] The State's spending discretion is limited by the constitution-"[w]hile 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." [FN23]

FN15. Alaska Const. art. I, § 1.

FN16. *See supra* note 2.

FN17. *See, e.g., Doe v. Maher*, 40 Conn.Supp. 394, 515 A.2d 134, 157-59 (1986); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 934-37 (1982); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon*, 63 Or.App. 41, 663 P.2d 1247, 1257-61 (1983), *aff'd on other grounds*, 297 Or. 562, 687 P.2d 785 (1984); *see also Committee to Defend Reprod. Rights v. Myers*, 29 Cal.3d 252, 172 Cal.Rptr. 866, 625 P.2d 779 (1981).

FN18. *See, e.g., New Mexico Right to Choose/NARAL v. Johnson*, 126 N.M. 788,

975 P.2d 841, 850-57 (1998); *Doe v. Maher*, 515 A.2d at 159-62.

FN19. *See, e.g., Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 398-99 (1981); *Doe v. Maher*, 515 A.2d at 146-57.

FN20. *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 (1993).

FN21. *Panepinto*, 446 S.E.2d at 667; *see also Myers*, 172 Cal.Rptr. 866, 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); *Burns*, 450 A.2d at 937 ("[W]e 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 ("[C]ourts 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.").

FN22. *Moe*, 417 N.E.2d at 401 (quoting *Maher v. Roe*, 432 U.S. 464, 469-70, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977)).

FN23. *Id.*

[4] Alaska's constitutional equal protection clause mandates "equal treatment of those similarly situated;" FN24 it protects Alaskans' right to non-discriminatory treatment more robustly than does the federal equal protection clause.FN25 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.FN26 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." FN27 Second, we examine the State's interests served by the challenged regulation.FN28 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. FN29 But if "the objective degree to which the challenged legislation tends to deter [exercise of constitutional rights]" FN30 is significant, the regulation cannot survive constitutional challenge unless it serves a compelling state interest.FN31 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.FN32

FN24. *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984).

FN25. *See State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991).

FN26. *See Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396 (Alaska 1997).

FN27. *Id.* (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269).

FN28. *See id.*; *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

FN29. *See id.*

FN30. *Alaska Pacific Assurance Co.*, 687 P.2d at 271.

FN31. *See Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396 (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269-70).

FN32. *See id.* at 396-97.

[5] The regulation at issue in this case affects the exercise of a constitutional right, the right to reproductive freedom.[FN33] Therefore, the regulation is subject to the most searching judicial scrutiny, often called "strict scrutiny."[FN34] 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."[FN35] 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."[FN36]

FN33. *See Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 969-69 (Alaska 1997).

FN34. *See State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

FN35. *Id.*

FN36. *Valley Hosp.*, 948 P.2d at 969.

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.[FN37] We concluded that the challenged regulation did not meet this high standard and thus violated equal protection.[FN38] Like the regulation at issue today, *910 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.[FN39] 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]."[FN40]

FN37. 687 P.2d at 273-74.

FN38. *See id.* We have since applied more relaxed scrutiny where "[t]he 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.

FN39. *See* 687 P.2d at 266-67.

FN40. *Id.* at 271.

[6] 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.[FN41] The municipality had undertaken to publish a guidebook to public and private organizations in Anchorage, but excluded the Alaska Gay Coalition from the book.[FN42] We held that this exclusion violated the Coalition's constitutional rights to equal protection under the law.[FN43] We explained:

FN41. 578 P.2d 951, 960 (Alaska 978).

FN42. *Id.*

FN43. *Id.*

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.[FN44]

FN44. *Id.*

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,[FN45] beautifying cosmetic surgery,[FN46] and transplants of organs other than kidney, cornea, skin, and bone marrow.[FN47] 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*:

> [FN45. 7 AAC 43.385(2), (6), (9), (11) & (12).]

> [FN46. 7 AAC 43.385(4).]

> [FN47. 7 AAC 43.385(7).]

> 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.[FN48]

> [FN48. 394 U.S. 618, 633, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).]

Like *Alaska Pacific Assurance Co.*, *Alaska Gay Coalition* establishes that under Alaska's equal protection provision the government*911 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.[FN49] *Shapiro* invalidated state laws that denied welfare benefits to persons who had moved into the jurisdiction within the past year.[FN50] The Court found that "the prohibition of benefits ... creates a classification which constitutes an invidious discrimination denying [new residents] equal protection of the laws."[FN51] 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."[FN52]

> [FN49. 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, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).]

> [FN50. *See id.* at 62, 89 S.Ct. 1322.]

FN51. *Id.* at 627, 89 S.Ct. 1322.

FN52. *Id.* at 631, 89 S.Ct. 1322 (internal quotations omitted) (alteration in original) (quoting *United States v. Jackson*, 390 U.S. 570, 581, 88 S.Ct. 1209, 20 L.Ed.2d 138 (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, 112 S.Ct. 2791, 120 L.Ed.2d 674 (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.

[7][8] 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.[FN53] 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,[FN54] differential treatment of similarly situated people is permissible only if the distinction between the persons "rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation."[FN55] 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.[FN56]

FN53. In the "Purpose" section of the Medicaid statute, the legislature "declare[s] 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.

FN54. *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).

FN55. *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976) (quoting *State v. Hyde*, 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.*

FN56. 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, 100 S.Ct. 2671, 65 L.Ed.2d 784 (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, 634, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) and *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973), discussed in this opinion.

*912 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.[FN57] In *United States Department of Agriculture v. Moreno*, the United States Supreme Court invalidated a similar restriction under rational basis scrutiny alone.[FN58] 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.[FN57]

FN57. *Shapiro*, 394 U.S. at 638, 89 S.Ct. 1322.

FN58. 413 U.S. at 538, 93 S.Ct. 2821.

FN59. *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, 93 S.Ct. 2821. 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, 93 S.Ct. 2821 (internal quotations omitted, third alteration added).

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."[FN60] 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.[FN61] And New York's highest court held that equal protection was violated by a statute that "effectively provide[d] ... that the aged, disabled, and blind are entitled to less public assistance than other needy persons."[FN62]

FN60. *Lindsey v. State*, 22 Cal.App.3d 566, 572, 99 Cal.Rptr. 410 (Cal.App.1971).

FN61. *See id.*

FN62. *Lee v. Smith*, 43 N.Y.2d 453, 402 N.Y.S.2d 351, 352, 373 N.E.2d 247, 248 (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. Ivanson*, 67 Cal.App.4th 328, 337-38, 78 Cal.Rptr.2d 886 (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. Dreyer*, 70 Cal.App.4th 886, 888-89, 83 Cal.Rptr.2d 82 (1999) (analyzing same regulation as in *County of Orange* and finding no equal protection violation).

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."[FN63]

FN63. *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 937 (1982).

Because 7 AAC 43.140 infringes on a constitutionally protected interest, the State bears a high burden to justify the regulation.[FN64] Unless the State asserts a compelling state interest, the statute will necessarily fail constitutional scrutiny.[FN65] The State has failed to demonstrate such an interest in this case. It primarily defends 7 AAC 43.140 on *913 the grounds 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 women; 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.

FN64. *See* *Matanuska-Susitna Borough School Dist. v. State*, 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.").

FN65. *See* *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396-97.

The State also asserts an interest in minimizing health risks to mother and child, and submits that these interests are often closely aligned. But these 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. [FN66] And in Alaska, "[t]he scope of the fundamental right to an abortion ... is similar to that expressed in *Roe v. Wade*." [FN67] 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. [FN68]

FN66. 410 U.S. 113, 163-64, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

FN67. *Valley Hospital*, 948 P.2d at 969.

FN68. *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").

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.*

[9] 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." [FN69] 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.

FN69. *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.").

[10][11] The separation of powers doctrine and its complementary doctrine of checks and balances are implicit in the Alaska Constitution. [FN70] In light of the separation *914 of powers doctrine, we have declined to intervene in political questions, which are uniquely within the province of the legislature. [FN71] 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. [FN72] 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:

FN70. *See* *State v. Ostrosky*, 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 1975); *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.
>
> *Id.* at 1753 n. 7, 120 S.Ct. 1740 (internal quotations and citations omitted).

FN71. *See Abood v. League of Women Voters*, 743 P.2d 333, 338 (Alaska 1987); *Malone*, 650 P.2d at 396-97.

FN72. *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 972 (Alaska 1997).

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.[FN73]

FN73. *Committee to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252, 172 Cal.Rptr. 866, 625 P.2d 779 (1981).

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; [FN74] in *Gideon v. Wainwright*, it required funding of counsel for indigent criminal defendants; [FN75] and in *Shapiro v. Thompson*, it required states to give newcomers to the jurisdiction equal welfare benefits.[FN76] 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.

FN74. 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

FN75. 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

FN76. 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, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974).

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.[FN77] 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.[FN77] 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:

> FN77. *See supra* note 2.
>
> FN78. 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 (1992) (Levin, J., concurring). To our knowledge, his is the sole dissenting voice on this issue.

> [W]e 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 *915 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."[FN79]

> FN79. *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 395 (1981) (internal citations omitted); *see also Committee to Defend Reproductive Rights v. City*, 132 Cal.App.3d 852, 183 Cal.Rptr. 475, 478 (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.").

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.[FN80] 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.[FN81] As the Eleventh Circuit court noted, the statute could preclude payment only if an interpreting court so determined.[FN82] "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."[FN83]

> FN80. 768 F.2d 1293 (11th Cir.1985).
>
> FN81. *See id.* at 1295-96.
>
> FN82. *See id.* at 1296.
>
> FN83. *Id.*

We agree with the Eleventh Circuit: it is legally

28 P.3d 904
(Cite as: 28 P.3d 904)

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.

Alaska,2001.
State, Dept. of Health & Social Services v. Planned Parenthood of Alaska, Inc.
28 P.3d 904

END OF DOCUMENT

8

Table 18: Number of Induced Terminations by Method of Payment and Age: Alaska Occurrence, 2012

Payment Type	Total	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated
Cash	164	0	7	21	58	33	10	18	7	0	4
Insurance	119	0	4	10	44	23	15	17	4	1	1
Medicaid	581	3	27	65	209	160	71	42	7	0	7
Multiple Payment Sources	9	0	0	2	2	1	0	3	1	0	0
Other/Not Stated	766	4	23	84	267	182	109	85	23	1	8
Total	1,529	7	61	182	580	399	205	143	42	2	20

Table 19: Induced Terminations by Method of Payment and Percentage by Age: Alaska Occurrence, 2012

Payment Type	Total	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated
Cash	8.6	0.0	11.5	11.5	9.9	8.3	4.9	11.2	16.7	0.0	20.0
Insurance	7.3	0.0	6.6	5.5	7.7	5.8	7.3	11.2	9.5	50.0	5.0
Medicaid	35.7	42.9	44.3	35.7	36.0	37.6	34.6	29.4	16.7	0.0	35.0
Multiple Payment Sources	0.5	0.0	0.0	1.1	0.4	0.3	0.0	2.1	2.4	0.0	0.0
Other/Not Stated	47.9	57.1	37.7	46.2	45.2	46.1	53.2	45.5	54.8	50.0	40.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Table 20: Induced Terminations by Age and Percentage by Method of Payment: Alaska Occurrence, 2012

Payment Type	Total	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated
Cash	100.0	0.6	4.5	13.8	36.4	21.4	6.5	10.4	4.8	0.6	2.6
Insurance	100.0	0.0	3.4	8.4	37.0	19.3	12.6	14.3	3.4	0.8	0.8
Medicaid	100.0	0.5	4.6	11.2	36.0	26.6	12.2	7.2	1.2	0.0	1.2
Multiple Payment Sources	100.0	0.0	0.0	22.2	22.2	11.1	0.0	33.3	11.1	0.0	0.0
Other/Not Stated	100.0	0.5	3.0	11.0	33.6	25.1	14.2	8.5	3.0	0.1	1.0
Total	100.0	0.4	3.7	11.2	34.9	24.5	12.6	8.8	2.6	0.1	1.2

9

ARTICLES

Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives

By Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Sushecla Singh and Ann M. Moore

Lawrence B. Finer is associate director for domestic research, Lori F. Frohwirth is research associate, Lindsay A. Dauphinee is research assistant, Sushecla Singh is vice president for research and Ann M. Moore is senior research associate—all at the Guttmacher Institute, New York.

CONTEXT: Understanding women's reasons for having abortions can inform public debate and policy regarding abortion and unwanted pregnancy. Demographic changes over the last two decades highlight the need for a reassessment of why women decide to have abortions.

METHODS: In 2004, a structured survey was completed by 1,209 abortion patients at 11 large providers, and in-depth interviews were conducted with 38 women at four sites. Bivariate analyses examined differences in the reasons for abortion across subgroups, and multivariate logistic regression models assessed associations between respondent characteristics and reported reasons.

RESULTS: The reasons most frequently cited were that having a child would interfere with a woman's education, work or ability to care for dependents (74%); that she could not afford a baby now (73%); and that she did not want to be a single mother or was having relationship problems (48%). Nearly four in 10 women said they had completed their childbearing, and almost one-third were not ready to have a child. Fewer than 1% said their parents' or partners' desire for them to have an abortion was the most important reason. Younger women often reported that they were unprepared for the transition to motherhood, while older women regularly cited their responsibility to dependents.

CONCLUSIONS: The decision to have an abortion is typically motivated by multiple, diverse and interrelated reasons. The themes of responsibility to others and resource limitations, such as financial constraints and lack of partner support, recurred throughout the study.

Perspectives on Sexual and Reproductive Health, 2005, 37(3):110–118

Public discussion about abortion in the United States has generally focused on policy: who should be allowed to have abortions, and under what circumstances. Receiving less attention are the women behind the statistics—the 1.3 million women who obtain abortions each year[1]—and their reasons for having abortions. While a small proportion of women who have abortions do so because of health concerns or fetal anomalies, the large majority choose termination in response to an unintended pregnancy.[2] However, "unintended pregnancy" does not fully capture the reasons and life circumstances that lie behind a woman's decision to obtain an abortion. What personal, familial, social and economic factors lead to the decision to end a pregnancy?

The research into U. S. women's reasons for having abortions has been limited. In a 1985 study of 500 women in Kansas, unreadiness to parent was the reason most often given for having an abortion, followed by lack of financial resources and absence of a partner.[3] In 1987, a survey of 1,900 women at large abortion providers across the country found that women's most common reasons for having an abortion were that having a baby would interfere with school, work or other responsibilities, and that they could not afford a child.[4] Since 1987, little research in this area has been conducted in the United States, but studies done in Scandinavia and worldwide have found several recurring motivations: economic hardship, partner difficulties and unreadiness for parenting.[5] An extensive literature (both quantitative and qualitative) examines how women make the decision to have an abortion or a birth.[6] Here, we focus on women who have already made the decision to have an abortion.

Why revisit this topic? One compelling reason is that the abortion rate declined by 22% between 1987 and 2002,[7] and another is that the demographic characteristics of reproductive-age women in general and of abortion patients in particular have changed since 1987. For example, the proportion of abortion patients who have already had one or more children has increased, as have the proportions who are aged 30 or older, who are nonwhite and who are cohabiting. In addition, between 1994 and 2000, the proportion of women having abortions who were poor increased.[8] Because social and demographic characteristics may be associated with motivations for having an abortion, it is important to reassess the reasons why women choose to terminate a pregnancy.

A better understanding of these motivations can inform public opinion and prevent or correct misperceptions. Likewise, a fuller appraisal of the life circumstances within which women decide to have an abortion bears directly on the issue of public funding for abortions and provides evidence of how increasing legal and financial constraints on access to abortion may affect women's lives.

METHODS

Our study included a quantitative component (a structured survey) and a qualitative component (in-depth interviews), which together provide a more comprehensive examination of women's reasons for having abortions. The survey instrument, the interview guide and implementation protocols were approved by our organization's institutional review board. We also make comparisons to nationally representative surveys of abortion patients fielded in 1987 and 2000, and to a 1987 survey of reasons for abortion.[9]

Quantitative Component

The design of the structured questionnaire was modeled after the one used in the 1987 U.S. study,[10] and we kept the wording as similar as possible to the language of that survey. Our eight-page questionnaire covered in detail the reasons why the respondent chose to terminate her pregnancy. The first question was open-ended: "Please describe briefly why you are choosing to have an abortion now. If you have more than one reason, please list them all, starting with the most important one first." Nearly eight in 10 respondents provided at least one answer.

The next 12 questions asked about reasons for deciding to have an abortion. If the woman answered affirmatively to any of the first three ("Having a baby would dramatically change my life," "Can't afford a baby now" and "Don't want to be a single mother or having relationship problems"), she was asked which of a set of specific subreasons were relevant. Multiple responses were allowed, and a space was provided to write in reasons that were not listed.* The questionnaire then had a space for reasons that did not fit into any of the categories provided. Finally, women were asked about their demographic and social characteristics.

We purposively sampled 11 facilities from the universe of known abortion providers that perform 2,000 or more abortions per year; such facilities performed 56% of all abortions in the United States in 2000.[11] Our sample was chosen to be broadly representative, rather than strictly statistically representative, of all large providers. We included at least one facility in each of the nine major geographic divisions defined by the U.S. Census Bureau, and chose facilities that represented a variety of city sizes, patient characteristics and state abortion policies (such as waiting periods, parental consent regulations and use of state Medicaid funds). Most were clinics or private practices; one was a hospital. Of the 11 sites originally chosen, one clinic declined to participate and was replaced by a similar facility.

The questionnaire was pretested at a clinic that was not part of the sample to assess how well women understood the informed consent process and the survey questions.

Staff at the selected facilities asked women arriving for a pregnancy termination to participate in the survey and, if they agreed, to fill out the questionnaire by themselves and return it to a staff member in a sealed envelope. The questionnaire was available in English and Spanish. Participation was voluntary, and no identifying information about the respondents was collected.

The fielding period ranged from one to six weeks, depending on each facility's caseload. We established a minimum response rate of 50% of all abortion clients seen by each facility during its sampling period for the data to be considered representative of the women at that facility. The overall response rate was 58%, and facility rates ranged from 50% to 70%, because some women declined participation and some staff had minor difficulties adhering to the protocol. Fielding ran from December 2003 until March 2004, and 1,209 abortion patients completed the questionnaire.

Qualitative Component

We also conducted in-depth interviews with 38 women at four sites. The interview guide included all of the same topics as the survey. The selected sites were hospital-based and freestanding, in different regions of the country and in states with differing restrictions on access to and Medicaid reimbursement for abortion services. The sites were also chosen to represent varying city sizes and to capture a cross section of abortion patients. In three of these facilities, the structured survey had also been distributed. Staff at the study clinics offered all abortion patients a chance to participate; recruitment was not based on social or demographic characteristics.

Members of the study team interviewed respondents during their medical visit, typically before the procedure. Women were informed that the interviews would be recorded, and they provided verbal consent. The interviews lasted 30–60 minutes and were anonymous. The qualitative component was limited to fluent English speakers. Women were compensated $25 in cash for their participation. The interview period began at the end of the structured survey period and continued for two months.

Data Analysis

We used chi-square tests to examine differences in reasons for abortion across demographic subgroups. Multivariate logistic regression models refined our understanding of the variables associated with each reason. In addition, we conducted a factor analysis of the closed-ended and write-in reasons and subreasons to identify logical groupings.

The 1987 study purposely oversampled women having abortions at 16 weeks of gestation or later. We therefore weighted figures for 1987 to reflect the true distribution of abortions by gestation for all U.S. women. Given that the 2004 survey was not nationally representative, individual cases were not weighted. Because the sampling design involved 11 primary sampling units, we used statistical techniques that accounted for the clustered design to calculate

*In 1987, the question about ability to afford a baby did not offer specific subreasons, but asked women to write in subreasons. The most common responses were used to create the options for the 2004 version. Hence, comparisons of subreasons between 1987 and 2004 for this question are not valid.

†The facilities were free to alter this recommended process to best fit their client flow; most had respondents complete the survey as they waited for their procedure, but some facilities asked women to participate after their procedure and recovery period were over.

TABLE 1. Percentage of women in various surveys of abortion patients, by selected characteristics, 1987–2004

Characteristic	Structured survey, 2004 (N=1,209)	In-depth interviews, 2004 (N=38)	Nationwide survey, 2000 (N=10,683)	Structured survey, 1987 (N=1,900)	Nationwide survey, 1987 (N=9,488)
Age ≤19	20	24	19	30	35
Age 20–29	57	53	56	54	55
Never married	72	76	67	67	63
Has children	59	71	61	42	48
<200% of federal poverty level†	69	69	57	50	56
Some college	53	u	57	53	u
Black	31	45	32	26	26
Hispanic	19	11	20	7	13
<9 weeks' gestation	61	39	u	55	58
<13 weeks' gestation	88	89	u	87	88

†The 2004 study used the federal poverty level in 2003. Sources: nationwide survey, 2000—RK Jones, JE Darroch and SK Henshaw, 2002 (see reference 8). Structured survey, 1987—reference 4. Nationwide survey, 1987—SK Henshaw and J Silverman, 1988 (see reference 9).

accurate standard errors. We conducted all analyses using Stata version 8.2. All associations discussed were significant at $p<.05$ or less.

Of the 1,209 respondents, 4% gave no reasons and were excluded from most analyses. Higher proportions of these women than of the others were nonwhite and had children. In addition, nonresponse was 12–14% for age, parity, marital status, race and employment, and 26% for income, causing the N's for the multivariate models to be lower than those for the univariate and bivariate tabulations.

The audiocassettes of the in-depth interviews were professionally transcribed, and the research team listened to every tape while reviewing the transcription. Errors were corrected, and any information that could potentially identify respondents was removed. The edited transcripts were systematically coded using categories based on the project focus as well as related ideas emerging from the data. All coding was done by one author and checked for validity by another. We used the software N6 for coding and data analysis.

RESULTS

Respondents' Characteristics

Respondents to the structured survey of reasons for abortion were not substantially different from a nationally representative sample of abortion patients surveyed in 2000[12] in terms of age, marital status, parity, income, education, race or gestation (Table 1). Twenty percent were 19 or younger, and 57% were in their 20s. Seventy-two percent had never been married, and 59% had had at least one child. Some 60% were below 200% of the federal poverty line, including 30% who were living in poverty (not shown). More than half had attended college or received a college degree. Thirty-one percent of respondents were black, and 19% were Hispanic. (Four percent completed the questionnaire in Spanish.) Sixty-one percent were at fewer than nine weeks of gestation, and 88% were at fewer than 13 weeks.

However, the characteristics of abortion patients had changed between 1987 and 2000, and these changes were reflected in the 1987 and 2004 surveys of reasons for abortion. For example, the proportion who were minors increased from 18% to 21% in the nationally representative surveys carried out in 1987 and 2000; a similar increase (from 12% to 19%) was seen between the 1987 and 2004 surveys of reasons. The median age of respondents was 23.0 in the 1987 survey of reasons and 24.1 in 2004 (not shown). Fifty percent of women were below 200% of the federal poverty level in the 1987 survey of reasons, while in 2004, 69% were below this level. Also, the proportion who were Hispanic rose from 7% in 1987 to 19% in 2004.

The in-depth interview respondents were slightly older than the structured survey respondents, more than half were 25 or older (not shown). More than two-thirds had children, and two-thirds were living below 200% of the federal poverty level (with half at or below the poverty line—not shown). Marital status was similar between the two samples. Nearly half were black, and the proportion who were Hispanic was only 11%. Furthermore, almost half of the interview respondents were in their second trimester, a possible explanation for this overrepresentation is that these women were usually in the clinic on two consecutive days for their abortion procedures, and therefore were more likely to be available to participate in the interviews.

Reasons for Abortion

• *Reasons in 2004.* Among the structured survey respondents, the two most common reasons were "having a baby would dramatically change my life" and "I can't afford a baby now" (cited by 74% and 73%, respectively—Table 2). A large proportion of women cited relationship problems or a desire to avoid single motherhood (48%). Nearly four in 10 indicated that they had completed their childbearing, and almost one-third said they were not ready to have a child. Women also cited possible problems affecting the health of the fetus or concerns about their own health (13% and 12%, respectively).* Respondents were in a number of specific health reasons, from chronic or debilitating conditions such as cancer and cystic fibrosis to pregnancy-specific concerns such as gestational diabetes and morning sickness.

The most common subreason given was that the woman could not afford a baby now because she was unmarried (42%). Thirty-eight percent indicated that having a baby would interfere with their education, and the same proportion said it would interfere with their employment. In a related vein, 34% said they could not afford a child because they were students or were planning to study.

In the in-depth interviews, the three most frequently stated reasons were the same as in the structured survey: the drastic impact a baby would have on the women's lives or the lives of their other children (32 of 38 respondents), financial concerns (28), and their current relationship or fear of single motherhood (21). Nine women cited health concerns for themselves, possible problems affecting the

*Women's reasons for abortion may vary by type of facility. For example, women who undergo abortions at hospitals may be more likely than others to have sought an abortion for health reasons. However, administrators of participating sites raised the possibility that some women seeking abortions for fetal or maternal health reasons go to their facilities. Thus, underreporting of health reasons, while possible, is likely not substantial.

health of the fetus or both as a reason for terminating the pregnancy.

• *Changes in reasons, 1987–2004.* Several questions were identical or virtually identical on the 1987 and 2004 surveys of reasons for abortion and are thus comparable (Table 2). The proportions of women giving four of the five most common reasons for abortion in 2004 were similar to those in 1987. Roughly equal proportions of women in both surveys indicated that a baby would dramatically change their lives, that they could not afford a baby now, that they did not want to be a single mother or had problems with their relationship, and that they were not ready for a child or another child. While some of these proportions showed statistically significant differences, in our assessment they were not substantial, because the percentage changes were small.

However, the proportion of women indicating that they had completed their desired childbearing increased substantially (and significantly) between 1987 and 2004, from 28% to 38%. To assess whether this shift was due to a change in mothers' propensity to give this reason (in addition to the change in population composition described earlier), we stratified this analysis by both survey year and whether the woman had any children. The findings showed that mothers in 2004 were more likely to report this reason than were mothers in 1987 (not shown). Thus, the overall increase likely reflected both a rise in the proportion of abortion patients who were already mothers and an increased tendency of mothers to give this reason. The proportion of women indicating that having children or other dependents was a reason not to have another child increased from 22% to 32% between 1987 and 2004. This change, however, appeared to be due solely to the change in population composition (not shown). The proportion of women who cited a physical problem with their health also increased over the period.

On the other hand, smaller proportions of women in 2004 than in 1987 said that having a baby would interfere with their job or career (38% vs. 50%), that they were not mature enough (22% vs. 27%), that their husband or partner wanted them to have an abortion (14% vs. 24%), and that they and their partner could not or did not want to get married (12% vs. 30%). In both surveys, 1% indicated that they had been victims of rape, and less than half a percent said they became pregnant as a result of incest.

• *Most important reasons.* In both 1987 and 2004, unreadiness for a child or another child and inability to afford a baby were each mentioned by about one-quarter of women as their most important reason for having an abortion (Table 3, page 114).* The proportion indicating that they had completed their childbearing, that they had others depending on them or that their children were grown increased over this period, from 8% to 19%. In contrast, the proportions reporting fear of single motherhood or relationship problems, and reporting that a child would interfere with school or career, both declined, as did the percentage describing themselves as not mature enough or too young.

Seven percent of women cited health concerns for themselves or possible problems affecting the health of the fetus as their most important reason in 2004, about the same as in 1987. Only half a percent of women indicated that their partners' or their parents' desire for an abortion was the most important reason behind their decision.

TABLE 2. Percentage of women reporting that specified reasons contributed to their decision to have an abortion, 2004 and 1987

Reason	2004 (N=1,160)	1987 (N=1,900)
Having a baby would dramatically change my life	74	70*
Would interfere with education	38	36
Would interfere with job/career/employment	38	50***
Have other children or dependents	32	22***
Can't afford a baby now	73	69
Unwanted	42	38
Student or planning to study	34	33
Can't afford a baby and childcare	28	28
Can't afford the basic needs of life	23	23
Unemployed	22	21
Can't leave job to take care of a baby	21	20
Would have to find a new place to live	19	20
Not enough support from husband or partner	14	16
Husband or partner is unemployed	12	9
Currently or temporarily on welfare or public assistance	8	8
Don't want to be a single mother or having relationship problems	48	52
Not sure about relationship	19	20
Partner and I can't or don't want to get married	12	30***
Not in a relationship right now	11	12
Relationship or marriage may break up soon	11	10*
Husband or partner is abusive to me or my children	2	3
Have completed my childbearing	38	28***
Not ready for (another) child	32	30
Don't want people to know I had sex or got pregnant	25	25
Don't feel mature enough to raise (another) child	22	27*
Husband or partner wants me to have an abortion	14	24***
Possible problems affecting the health of the fetus	13	14
Physical problem with my health	12	9*
Parents want me to have an abortion	6	8
Was a victim of rape	1	1
Became pregnant as a result of incest	<0.5	<0.5

*p<.05. **p<.01. ***p<.001. †Not available in 2004 and 1987. Note: na=not applicable, because survey questions were not comparable. Source: 1987—reference 4.

In-depth interview respondents gave an average of five reasons (range, 1–10) for why they were ending their pregnancy. However, women's responses often did not fit the categories of the structured survey; the reasons tended to overlap between the domains of unplanned pregnancy, financial instability, unemployment, single motherhood and current parenting responsibilities. For example, one 25-

• *Number of reasons given.* Of the 1,160 women who gave at least one reason, 89% gave at least two and 72% gave at least three; the median number of reasons given was four, and some women gave as many as eight reasons out of a possible 13 (not shown). Among women who gave at least two reasons, the most common pairs of reasons were inability to afford a baby and interference with school or work, inability to afford a baby and fear of single motherhood or relationship problems, and inability to afford a baby and having completed childbearing or having other people dependent on them.

In-depth interview respondents gave an average of five reasons (range, 1–10) for why they were ending their pregnancy. However, women's responses often did not fit the categories of the structured survey; the reasons tended to overlap between the domains of unplanned pregnancy, financial instability, unemployment, single motherhood and current parenting responsibilities. For example, one 25-

*We grouped some reasons slightly differently in Tables 2 and 3 to combine reasons that are conceptually similar. For example, women who indicated that they had children or other dependents were grouped with those who said they had completed their childbearing.

TABLE 3. Percentage distribution of women having an abortion, by their most important reason for having the abortion, 2004 and 1987

Reason	2004 (N=957)	1987 (N=1,773)
Not ready for (another) child/timing is wrong	25	27
Can't afford baby now	23	21
Have completed my childbearing/have other people depending on me/children are grown	19	8***
Don't want to be a single mother/ have relationship problems	8	12***
Don't feel mature enough to raise (another) child/too young	7	11**
Would interfere with education or career plans	4	10***
Physical problem with my health	4	3
Possible problems affecting the health of the fetus	3	3
Was a victim of rape	<0.5	1
Husband or partner wants me to have an abortion	<0.5	1
Parents want me to have an abortion	<0.5	<0.5
Don't want people to know I had sex or got pregnant	<0.5	1***
Other	6	1
Total	100	100

**p<.01. ***p<.001. †This was a multiple-response item in 1994 and 1987. Source: 1987—reference 4.

year-old woman, separated from her husband, said:

"Neither one of us are really economically prepared. For myself, I've been out of work for almost two years now. I just started, you know, receiving benefits from DSS and stuff. And with my youngest child being three years old, and me ... constantly applying for jobs for a while now,...if I got a job, I'm going to have to go on maternity leave. And with [the father],...let's just say, with four children, I don't think he needs another one."—*Mother of two, below the poverty line*

Factors Related to Reasons for Abortion

This study also examined the relationship between various social and demographic characteristics and reasons for having an abortion. These analyses included all women who mentioned each reason; they are not restricted to women's most important reasons. In several cases, we have grouped two reasons on the basis of their similarity and the factor analysis of related reasons.

• *Interference with school or career, and unreadiness for a child or another child.* Higher proportions of younger women, of women with no children and of never-married women identified interference with education or work and unreadiness for a child or another child as reasons for having an abortion, compared with their respective counterparts (Table 4). Even among older women and women who had children, however, about one third cited disruption of schooling or work. A higher proportion of more educated women than of less educated women gave this reason.

Nulliparity was the most important correlate of reporting interference with education or work as a reason for choosing abortion, after other variables were controlled for. Women who had children were less likely than women with no children to give these reasons (odds ratios, 0.2–0.3). In addition, women aged 30 and older were much less likely than those aged 17 and younger to cite educational or career interference (0.1).

Having no children was also the key predictor of reporting unreadiness for a child or another child. Women with children had reduced odds of citing this reason (odds ratios, 0.3–0.4). The fact that the odds ratios for women with one, two, and three or more children are similar suggests that unreadiness is more strongly linked to initiating childbearing than to limiting the number of children.

Fewer than half of the interview respondents said that having a baby now would keep them from fulfilling their goals or that they were not ready to have a(nother) child. The majority of these women were young and multiparous; their aspirations were primarily educational. Many women who gave one of these reasons said they were too young to have children and felt they were "just starting out" in their lives. Most framed their decision in terms of the desire to have children later, when they could better provide for them. A never-married woman who had just started college and whose partner was still in high school remarked:

"You know, I'm 19 years old. I don't think I should be

TABLE 4. Percentage of women reporting interference with school or career and unreadiness for having a child, as a reason for abortion, by selected characteristics, and odds ratios from multinomial logistic regression analysis of associations between reasons and characteristics, 2004

Characteristic	Interference with school or career		Not ready for another child	
	% (N=1,007)	Odds ratio (N=728)	% (N=[illegible])	Odds ratio (N=[illegible])
All	33	na	25	na
Age				
≤17 (ref)	62***	1.00	37*	1.00
18–19	71	0.46	39	0.85
20–24	38	0.26	30	1.19
25–29	47	0.30	33	1.16
≥30	25	0.12***	17	0.59
No. of children				
0 (ref)	70***	1.00	47***	1.00
1	41	0.37***	27	0.42**
2	35	0.26***	19	0.32**
≥3	31	0.31**	17	0.29**
Relationship status				
Never-married, not cohabiting (ref)	69***	1.00	39***	1.00
Cohabiting	34	1.00	37	1.06
Married	33	0.69	21	0.57
Formerly married, not cohabiting	47	1.28	14	0.62
Race/ethnicity				
White (ref)	33	1.00	24	1.00
Black	37	2.05*	31	1.85
Hispanic	46	0.78	28	0.93
Other	43	2.01	30	0.48
% of federal poverty level				
<100 (ref)	33	1.00	32	1.00
100–149	37	1.22	31	0.85
150–199	30	0.79	23	0.76
≥200	32	0.77	23	0.76
Education†				
<H.S. graduate (ref)	39**	1.00	19	1.00
H.S. graduate/GED	35	1.12	29	1.63
Some college/ associate degree	44	2.28*	20	1.57
College graduate	31	1.38	31	1.53

*p<.05. **p<.01. ***p<.001. †Past averages include only women aged 25 and older. Na=na. Ch-square tests measured differences across the entire distribution. na=not applicable. ref=reference group.

having a child right now. I should be more focused on what I'm trying. I'm trying to do things for myself. How am I supposed to do something for another human?"—*Woman with no children, above the poverty line*

• **Financial difficulties.** Higher proportions of women who were unmarried or cohabiting, nonwhite, poorer and unemployed said they could not afford to have a child now, compared with their respective counterparts (Table 5). This reason was also more commonly given by young teenagers and women aged 20–24. Some of these social and demographic characteristics likely have overlapping influence. For example, young women are likely to be unmarried, and poor women are likely to be unemployed. In the multivariate analysis, marital status and both economic variables remained significant: Women who were married, who were in the highest income category and who were employed had reduced odds of saying they could not afford a baby (odds ratios, 0.4–0.6).

In the qualitative sample, of women who stated that they could not afford to have a child now, the majority had children already. Financial difficulties included the absence of support from the father of either the current pregnancy or the woman's other children, anticipating not being able to continue working or to find work while pregnant or caring for a newborn, not having the resources to support a child whose conception was not planned and lacking health insurance. Respondents who gave financial reasons for having an abortion frequently reported feeling stressed and strained to the limit of their current resources, as did the never-married woman who commented:

"I am on my own, and financially and mentally, I can't stand it now. That is one whole reason... It's a sin to bring the child here and not be able to provide for it. This is just in the best interest for me and the children—no, my children and this child."—*19-year-old with three children, below the poverty line*

One respondent had recently been homeless, and another's partner prevented her from working; some respondents were on government assistance:

"I have three kids already, and the guy that I was living with, he was, you know, doing good as far as helping me, but he just went to jail... I am alone with three kids, and they are all I have. It's hard. I am barely making it, you know, because it is harder to get things—you can't get food, you know, you cannot get food stamps. I only get 50 dollars in food stamps a month!... It is just too hard."—*22-year-old, below the poverty line*

A few respondents articulated their fears that having another baby now would force them onto public assistance, an outcome they wanted to avoid. For example,

"If you think about it, OK—I get pregnant, I might not be financially stable. I got to take somebody's working money for welfare. You know what I'm saying? Why not let me get out of this situation, so I could better myself so when I do get pregnant and have another baby, I don't have to take your money, because you're working. I'm not going to be working, because I'm going to be sitting on my welfare, taking care of my baby. Why?"—*21-year-old with one child, below the poverty line*

TABLE 5. Percentage of women reporting that they could not afford another child, that they did not want to be a single mother or had relationship problems, and that they had completed childbearing or had other people depending on them, as a reason for abortion, by selected characteristics, and odds ratios from multivariate logistic regression analysis of associations between reasons and characteristics, 2004

Characteristic	Can't afford a baby now		Single mother or relationship problems		Completed childbearing or have dependents	
	% (N=1,147)	Odds ratio (N=774)	% (N=1,071)	Odds ratio (N=772)	% (N=1,147)	Odds ratio (N=828)
All	73	na	48	na	47	na
Age						
≤17 (ref)	89***	1.00	36	1.00	8***	1.00
18–19	69	0.34	39	1.48	22	4.32*
20–24	81	1.07	51	2.62	46	10.64***
25–29	70	0.68	52	3.22	58	20.68***
≥30	69	0.62	47	2.88	69	40.57***
No. of children						
0 (ref)	73	1.00	48	1.00	3***	na
1	74	1.01	46	0.73	75	na
2	68	0.80	51	1.05	81	na
≥3	73	0.83	47	0.66	90	na
Relationship status						
Never-married, not cohabiting (ref)	79***	1.00	59***	1.00	37***	1.00
Cohabiting	80	1.30	38	0.51*	48	1.49
Married	53	0.44*	25	0.29***	71	4.67***
Formerly married, not cohabiting	68	0.70	72	2.14*	72	4.39***
Race/ethnicity						
White (ref)	69**	1.00	40	1.00	41***	1.00
Black	78	1.60	48	0.85	69	2.89***
Hispanic	79	1.32	56	1.00	51	1.00
Other	77	1.51	36	0.49	44	1.05
% of federal poverty level						
<100 (ref)	81***	1.00	53	1.00	61**	1.00
100–149	79	1.04	50	0.83	46	0.51*
150–199	75	0.80	46	0.74	50	0.52
≥200	69	0.51*	43	0.64	38	0.34***
Education†						
<H.S. graduate (ref)	81	1.00	57	1.00	69***	1.00
H.S. graduate/GED	66	0.58	44	0.73	79	0.86
Some college/ associate degree	65	1.00	53	1.00	62	0.36***
College graduate	58	0.81	47	0.86	47	0.25***
Employment						
Unemployed (ref)	79**	1.00	45	1.00	48	1.00
Employed	69	0.59*	48	1.19	48	0.98

*p<.05 **p<.01 ***p<.001 †Women aged 25 and older. Note: Chi-square tests measured differences across the entire distribution of reasons; applicable parity was omitted from the third model's reference group.

• **Single motherhood and relationship problems.** As might be expected, higher proportions of unmarried women who were not cohabiting (including both formerly married and never-married women) than of cohabiting or married women cited fear of single motherhood or relationship problems as a reason (Table 5). Multivariate analysis found that formerly married, noncohabiting women had elevated odds of giving this reason (odds ratio, 2.1), while cohabiting and married women had reduced odds (0.3–0.5). Furthermore, cohabiting women were more likely than married women to report this reason (not shown).

TABLE 6. Percentage of women reporting fetal or personal health concerns as a reason for abortion, by selected characteristics and odds ratios from multivariate logistic regression analysis of associations between reasons and characteristics, 2004

Characteristic	Fetal health		Personal health	
	% (n= 1,042)	Odds ratio (n=942)	% (n= 1,088)	Odds ratio (n=747)
All	13	na	32	na
Age				
≤17 (ref)	7	1.00	6***	1.00
18–19	9	2.43	5	2.16
20–24	13	3.37	9	3.55
25–29	13	3.67	13	9.11
≥30	17	5.47	22	21.98*
No. of children				
0 (ref)	13	1.00	6*	1.00
1	14	1.01	12	1.88
2	13	0.88	15	0.85
≥3	10	0.71	17	1.00
Relationship status				
Never-married, not cohabiting (ref)	11	1.00	9*	1.00
Cohabiting	14	1.28	15	1.41
Married	14	1.15	17	0.82
Formerly married, not cohabiting	15	1.09	15	0.72
Race/ethnicity				
White (ref)	17*	1.00	14	1.00
Black	8	0.45*	8	0.67
Hispanic	11	0.54	13	1.03
Other	10	0.54	10	0.67
% of federal poverty level				
<100 (ref)	15	1.00	13	1.00
100–149	12	0.61	10	1.08
150–199	7	0.46	5	0.31*
≥200	14	0.70	12	0.43*
Education†				
<H.S. graduate (ref)	20	1.00	24	1.00
H.S. graduate/GED	10	0.54	10	0.70
Some college/ associate degree	16	1.00	17	0.67
College graduate	15	1.38	15	0.69
Weeks pregnant				
<7 (ref)	12	1.00	13	1.00
7–8	10	0.89	11	0.81
9–12	11	1.08	11	0.77
≥13	21	3.27*	10	0.84

*p≤.05. ***p≤.001 †Percentages include only women aged 25 and older. Note: Chi-square tests measure differences across the entire distribution, not just relative to the reference group.

More than half of the women in the qualitative sample cited concerns about their relationship or single motherhood as a reason to end the pregnancy. Relationship problems included the partner's drinking, physical abuse, unfaithfulness, unreliability, immaturity and absence (often due to incarceration or responsibilities to his other children). Many of these women were disappointed because their partner had reacted to the pregnancy by denying paternity, breaking off communication with them or saying that they did not want a child. A small number of women stated that they were in new relationships and that it was too soon to have a child with their partner. Most who gave this reason had children already. They related how hard it was to raise children by themselves and how hard it would be to add another child to their families. Some felt depleted and alone:

"Well, I already had one son, and right now he's growing up without a father, just me and him. .If you ain't got a lot of help with the family support, it's really hard. Sometimes I can't handle it, but I have to, you know, for my son's sake. ..I believe, right now, I'm gonna take care of myself and my son."—*19-year-old, below the poverty line*

A number of women stated that it was unfair to one's children to bring them up without a father figure.

•*Completed childbearing and responsibility to dependents.* Bivariate analysis of these reasons revealed some expected relationships: High proportions of older women, women with children and women who were currently married, as well as those formerly married and not cohabiting, cited completion of their childbearing or already having dependents as a reason for having an abortion (Table 5). The proportion citing these reasons increased with age. These reasons were more commonly given by black and Hispanic women, and by poorer and less educated women.

Combining all reasons that refer to other people or to future children,* we found that 74% of women, including at least two-thirds of women in every age, parity, relationship, racial, income and education category, identified concern for or responsibility to other individuals as a factor in their decision (not shown). Nine in 10 of these women (66% of all women) cited their inability to care for a child at this stage in their life or the quality of life they could provide for a(nother) child, and 45% of them (33% of all women) reported concern for other individuals, most commonly their children.

An initial multivariate analysis indicated that, as might be expected, women with children had sharply elevated odds of saying that they had completed their childbearing or that they had children or others depending on them, this variable overwhelmed the impact of other variables (not shown). Because of the extremely high odds ratios for this variable, we omitted nulliparous women from a second model (also not shown), and found that parity was no longer significant—that is, the important difference was between women with any number of children and those with no children. For the model shown in Table 5, we omitted parity entirely, and found that women aged 18 and older, married and formerly married women, black women, and poorer or less educated women had elevated odds of giving these reasons, findings that reflected the bivariate results.

Some interviewees said they were ending this pregnancy because they did not want any more children. Women cited financial reasons, their age and health, not wanting to "start over" and already having children of both genders. Many mentioned that having another baby would deprive the children they already had of financial, emotional and

*These reasons included financial, partner and relationship problems resulting in the inability to care for or support another child; possible problems affecting the health of the fetus; difficult family circumstances such as a current child's chronic illness; financial impacts on existing children and the need to care for other dependents.

time resources. One lower income, divorced mother said.

"There is just no way I could be the wonderful parent to all three of them and still have enough left over to keep the house clean and make sure the bills are paid and I'm in bed on time so I can be at work on time. It's impossible."
—*30-year-old with two children, below the poverty line*

Women's concerns ranged from worries about their own health, to dealing with their children's chronic illnesses or severe disabilities, to a lack of adequate birthspacing.

• *Fetal and personal health.* Lower proportions of black and Hispanic women than of whites cited possible problems affecting the health of the fetus as a reason to end their pregnancies (Table 6). In the multivariate analysis, black women had reduced odds of reporting this reason (odds ratio, 0.5). In addition, women at 13 or more weeks of gestation had elevated odds of citing fetal health compared with those at fewer than seven weeks of gestation (3.3).

Concern for one's own health was a more common reason for having an abortion among older women and those with children; it was cited less often by women who were never married and not cohabiting. Women aged 30 and older had greatly elevated odds of citing their own health compared with the youngest age-group (odds ratio, 21.9), but we found no significant association with parity. In addition, women living at or above 150% of the federal poverty level were less likely to mention their own health than were women living in poverty (0.3–0.6).

A woman's concerns for her health or possible fetal health problems were cited as reasons to end her pregnancy by one-fourth of the qualitative sample. Women who felt that their fetus's health had been compromised cited concerns such as a lack of prenatal care, the risk of birth defects due to advanced maternal age, a history of miscarriages, maternal cocaine use and fetal exposure to prescription medications. Concerns about personal health included chronic and life-threatening conditions such as depression, advanced maternal age and toxemia. More commonly, however, women cited feeling too ill during the pregnancy to work or take care of their children.

• *Opinions on adoption.* Respondents were not specifically asked about adoption, nevertheless, it came up spontaneously in both parts of the study. While fewer than 1% of women in the quantitative survey volunteered that they would not consider or did not favor having a baby and giving it up for adoption, more than one-third of interview respondents said they had considered adoption and concluded that it was a morally unconscionable option because giving one's child away is wrong.

DISCUSSION

Women's reported reasons for ending pregnancies have been consistent over time. Furthermore, the proportion of women reporting each major reason changed relatively little between 1987 and 2004. The few larger changes appear to have been at least partially due to changes in the composition of the population, rather than entirely to changes in women's tendency to give those reasons.

The decision to have an abortion is typically motivated by diverse, interrelated reasons. Nearly three-quarters of respondents indicated that they could not afford to have a child now, and large proportions mentioned responsibilities to children, partner issues and unreadiness to parent. The in-depth interviews revealed that these reasons are multiple dimensions of complicated life situations. For example, financial difficulties are often the result of lack of support from one's partner, or lack of a partner altogether; and the financial and emotional responsibility to provide for existing children without adequate resources makes it too hard for some women to care for another child.

Yet some broad concepts emerged from the study. A cross-cutting theme was women's responsibility to children and other dependents, as well as considerations about children they may have in the future. Most women in every age, parity, relationship, racial, income and education category cited concern for or responsibility to other individuals as a factor in their decision to have an abortion. In contrast to the perception (voiced by politicians and laypeople across the ideological spectrum) that women who choose abortion for reasons other than rape, incest and life endangerment do so for "convenience,"[1] our data suggest that after carefully assessing their individual situations, women base their decisions largely on their ability to maintain economic stability and to care for the children they already have.

In addition, the topic of women's limited resources, such as financial constraints and lack of partner support, regularly appeared in the survey and interview responses. A large majority of women cited financial hardship, often along with other reasons. Financial problems, exacerbated by other forms of instability, limit women's ability to provide sufficient support to additional children. The concept of responsibility is inseparable from the theme of limited resources; given their present circumstances, respondents considered their decision to have an abortion the most responsible action. The fact that many women cited financial limitations as a reason for ending a pregnancy suggests that further restrictions on public assistance to families could contribute to a continued increase in abortions among the most disadvantaged women.[4]

Although these concerns appeared among all groups, different groups of women gave diverse reasons for having abortions. Younger women who had not begun their childbearing often reported that they were unprepared for the transition to motherhood, while older women, the large majority of whom were already mothers, regularly cited their responsibility to children or other dependents as a key factor behind the decision to have an abortion.

Only a small proportion of women cited concerns about their own health. However, the qualitative results showed that these concerns encompassed not just risks to future health, but also the health burden of pregnancy itself. They further revealed how health concerns are linked to the concept of responsibility. Some women saw the physical burden of pregnancy and its associated health conditions as threatening their ability to fulfill responsibilities to de-

pendents. Others underscored the importance of appropriate birthspacing for their own health and for the health and economic security of their children.

In light of the public debate over the morality of abortion, it is notable that the women in our survey emphasized their conscious examination of the moral aspects of their decisions. Although some described abortion as sinful and wrong, many of those same women, and others, described the indiscriminate bearing of children as a sin, and their abortion as "the right thing" and "a responsible choice." Respondents often acknowledged the complexity of the decision, and described an intense and difficult process of deciding to have an abortion, which took into account the moral weight of their responsibilities to their families, themselves and children they might have in the future.

In the in-depth interviews, the language women used suggests that abortion was not something they desired; instead, these women were deciding not to have a child at this time. Facing unintended pregnancies, they clearly understood the implications of having a child (most of them firsthand) and were aware of their options. They saw not having a child as their best (and sometimes only) option.

Some advocates have used highly selective samples to claim that the majority of women having abortions are coerced into the decision.[15] Such claims suggest that women lack control over their own lives, but our findings attest that women independently make the decision to have an abortion. The proportion of women citing influence from partners or parents is small (and has declined since 1987), and fewer than 1% of respondents indicated that this influence was their most important reason.

This study is subject to some limitations. Our sample is not strictly nationally representative. Also, only 39% of the abortion patients seen by the participating facilities completed the survey, and nonresponse on some variables—notably, income—was high. However, the social and demographic characteristics of respondents were similar to those of two nationally representative surveys, which provides some reassurance that the findings are representative of abortion patients in the United States.

Although the focus of this study was women's reasons for having abortions, our findings have broader implications regarding the burden of unwanted pregnancy and the need for increased access to and use of contraceptive services. Better access to emergency contraception, for example, could lead to a reduction in unintended pregnancy, a decrease in the national abortion rate and, on the individual level, a decline in the number of women confronted with the difficult decision of how to resolve an unwanted pregnancy. The fact that an increasing proportion of women having abortions are poor[16] underscores the importance of public assistance for family planning programs as an effective means of reducing the incidence of both unintended pregnancy and abortion.

REFERENCES

1. Jones LB and Henshaw SK, Abortion incidence and services in the United States in 2000, *Perspectives on Sexual and Reproductive Health*, 2003, 35(6):273–281.

2. Ibid.

3. Finer G, Barrett E and Gresham LM, Women and abortion: attitudes, social networks, decision-making, *Social Work and Health Care*, 1985, 11(1):69–99.

4. Torres A and Forrest JD, Why do women have abortions? *Family Planning Perspectives*, 1988, 20(4):169–176.

5. Vestermark V, Petersen PV and Aaping UI, Reasons for choosing legal abortion (in Danish), *Ugeskrift for Laeger*, 1990, 152(32):2300–2309; Hansen SK et al., Use of contraception and reasons for choosing abortion among abortion applicants (in Danish), *Ugeskrift for Laeger*, 1990, 150(41):3773–3776; Jacobsen O, Abortion applicants—reasons, prevention, information (in Norwegian), *Tidsskrift for den Norske Laegeforening*, 1991, 111(20):2537–2538; Silva S et al., Women's life cycle and abortion decision in unintended pregnancies, *Journal of Epidemiology and Community Health*, 2003, 57(8):601–605, and Bankole A, Singh S and Haas T, Reasons why women have induced abortions: evidence from 27 countries, *International Family Planning Perspectives*, 1998, 24(3):117–127 & 152.

6. Fielding SL and Schaff EA, Social context and the experience of a sample of U.S. women taking RU-486 (mifepristone) for early abortion, *Qualitative Health Research*, 2004, 14(9):1212–1227, Tornbom M et al., Decision-making about unwanted pregnancy, *Acta Obstetricia et Gynecologica Scandinavica*, 1999, 78(7):630–634, Vaernad TS and Tollan A, The decision process in induced abortion (in Norwegian), *Tidsskrift for den Norske Laegeforening*, 1990, 110(16):2096–2097, Finer G, Barrett E and Gresham LM, 1985 op cit (see reference 3), and Freidlander ML, Kaul T and Samel CA, Abortion: predicting the complexity of the decision-making process, *Women & Health*, 1984, 9(1):43–54.

7. The Alan Guttmacher Institute (AGI), *Estimates of U.S. Abortion Incidence in 2001 and 2002*, 2003, <http://www.guttmacher.org/pubs/2005/05/18/ab_incidence.pdf>, accessed May 27, 2005.

8. Jones RK, Darroch JE and Henshaw SK, Patterns in socioeconomic characteristics of women obtaining abortions in 2000–2001, *Perspectives on Sexual and Reproductive Health*, 2002, 34(5):226–235, Henshaw SK and Kost K, Abortion patients in 1994–1995: characteristics and contraceptive use, *Family Planning Perspectives*, 1996, 28(4):140–147 & 158, and Henshaw SK and Silverman J, The characteristics and prior contraceptive use of U.S. abortion patients, *Family Planning Perspectives*, 1988, 20(4):158–159 & 162–168.

9. Henshaw SK and Silverman J, 1988, op cit (see reference 8), Jones RK, Darroch JE and Henshaw SK, 2002 op cit (see reference 8) and Torres A and Forrest JD, 1988 op cit (see reference 4).

10. Torres A and Forrest JD, 1988 op cit (see reference 4).

11. Unpublished tabulations of data from the 2000 Abortion Provider Survey, AGI, New York.

12. Jones RK, Darroch JE and Henshaw SK, 2002 op cit (see reference 8).

13. Nelson D, Today's topic: the future of Roe v. Wade, *New Concrete Journal*, Jan. 23, 2005, p. 9C, Barrella L, The Award, *Salmagundi*, Sept. 20, 2004, <http://archive.salmagundi.com/news/feature/2004/09/20/t_shirts/index_pp.html>, accessed May 13, 2005, Ernst M, Valuing life isn't an issue of convenience, *Ka Leo O Hawaii*, Apr. 21, 2005, <http://www.kaleo.org/vnews/display.v/ART/2005/04/20/42660ca93871c?in_archive=1>, accessed May 13, 2005, and Overthon, new abortion law, editorial, *Deseret (Utah) Morning News*, June 7, 2004 <http://deseretnews.com/dn/print/1,1442,595008263,00.html>, accessed May 13, 2005.

14. Jones RK, Darroch JE and Henshaw SK, 2002 op cit (see reference 8).

15. Elliot Institute, *Forced Abortion in America: A Special Report*, 2004, <http://www.afterabortion.org/articles/forced.html>, accessed Jan. 24, 2005.

16. Jones RK, Darroch JE and Henshaw SK, 2002 op cit (see reference 8).

Acknowledgments

The authors thank the facilities that participated in the research, Suzette Anderson for conducting in-depth interviews, and Rachel Gold, Stanley Henshaw, Rachel Jones, Robert Kaestner, John Santelli and James Trussell for reviewing early drafts of this article. The research on which this article is based was funded by The David and Lucile Packard Foundation.

Author contact: *lfrost@guttmacher.org*

HOUSE COMMITTEE REPORT

(11)
Date Referred to Committee: April 11, 2013 **FURTHER REFERRALS:**

Date of Committee Action: 2/27/14

The FINANCE Committee considered: **SSHB 49 am**

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 49 am
"An Act relating to women's health services and defining 'medically necessary abortion' for purposes of making payments under the state Medicaid program."

SB 49 MEDICAID PAYMENT FOR ABORTIONS; TERMS

Recommends it be replaced with [✓] HCS *or* **[ ] CS** *for* SSSB 49 (FIN)
For Senate Bills with new title: [ ] Technical Title [✓] New Title: HCR_____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES
*FN# is assigned by Chief Clerk's Office

*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	DHS	✓		
	DHS		✓	
	DHS		✓	

PREVIOUS FISCAL NOTES

FN#	List by Dept(s):	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gara		✓		
	Muñoz				✓
	Neunzi	✓			
	Thompson	✓			
	Edgmon		X		
	T. Wilson	✓			
	Holmes		X		
	COSTELLO	✓			
Chair:	Stoltze	✓			
Chair:	Austerman		X		

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049SSam-DHSS-MAA-02-24-14
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance Committee

Department: Department of Health and Social Services
Appropriation: Health Care Services
Allocation: Medical Assistance Administration
OMB Component Number: 242

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services							
Travel							
Services	55.2						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**55.2**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
1002 Fed Rcpts	41.5						
1003 G/F Match	13.7						
Total	**55.2**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/15

Why this fiscal note differs from previous version:

Updated for 2nd session to accurately reflect FY2015 and out year costs.

Prepared By: Margaret Brodie, Director — Phone: (907)334-2520
Division: Health Care Services — Date: 02/24/2014 12:00 PM
Approved By: Sarah Woods, Deputy Director — Date: 02/24/14
Agency: Finance & Management Services

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. SSSB049AM

Analysis

This bill would limit funding of abortions for Medicaid eligible individuals to medically necessary abortions and abortions that are the result of rape or incest. The bill provides a statutory definition of medical necessity. Currently, Alaska Medicaid only pays for medically necessary abortions and abortions that are the result of rape or incest.

The legislation also directs the department to submit a Medicaid State Plan Amendment to create a women's health program. A women's health program would include family planning-related services, including testing and treatment of sexually-transmitted diseases, contraceptive methods, and an annual family planning visit at an office/clinic. We assume that we would make these services available to individuals with incomes below 175% of the federal poverty level for Alaska.

In order to add this program to Medicaid, it is necessary to make changes to the Medicaid claims processing system to recognize recipients of the new program and pay claims appropriately. The Department estimates that there will be a one-time cost of $55.2, 75% of which will be reimbursed by the federal government.

Regulation changes will be necessary to specify the eligibility requirements and covered services included in this Medicaid option. No additional funding is required to change the regulations as the Department frequently updates its Medicaid regulations.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049HCSSS(FIN)-DHSS-HCMS-02-25-14
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance Committee

Department: Department of Health and Social Services
Appropriation: Medicaid Services
Allocation: Health Care Medicaid Services
OMB Component Number: 2077

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	**0.0**	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	**0.0**	***	***	***	***	***

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/15

Why this fiscal note differs from previous version:

Updated to reflect new House Finance Committee Substitute that deletes the requirement for the department to submit a Medicaid State Plan Amendment to create a women's health program.

Prepared By: Margaret Brodie, Director — Phone: (907)334-2520
Division: Health Care Services — Date: 02/25/2014 11:00 AM
Approved By: Sarah Woods, Deputy Director, Finance & Management Services — Date: 02/25/14
Agency: Health & Social Services

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. HCSSSSB049(FIN)

Analysis

This bill would limit funding of abortions for Medicaid eligible individuals to medically necessary abortions and abortions that are the result of rape or incest. The bill provides a statutory definition of medical necessity. Currently, Alaska Medicaid only pays for medically necessary abortions and abortions that are the result of rape or incest. However, the determination of medical necessity is made by the physician requesting authorization of the abortion based on professional judgment, not a specific definition.

It is possible that use of specific criteria for medical necessity could reduce the number of abortions qualified for state funding. However, the Department lacks the data needed to estimate how many abortions would fail to meet the bill's definition of medical necessity. Therefore, we cannot determine the impact on expenditures.

Medicaid payment regulations would need to be amended to apply the specific definition of medical necessity as a condition of payment for abortion services.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049SS(am)-DHSS-PAFS-02-24-14
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance Committee

Department: Department of Health and Social Services
Appropriation: Public Assistance
Allocation: Public Assistance Field Services
OMB Component Number: 236

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	**0.0**	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	**0.0**	***	***	***	***	***

Positions

Full-time	***		***	***	***	***	***
Part-time							
Temporary							

Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/15

Why this fiscal note differs from previous version:

Fiscal Note reflects the Affordable Care Act (ACA) requirement that individuals purchase health insurance and the ACA mandate that those insurance policies offer Essential Health Benefits, which include Family Planning Services.

Prepared By: Ron Kreher, Director — Phone: (907)465-5847
Division: Public Assistance — Date: 02/24/2014 02:00 PM
Approved By: Sarah Woods, Deputy Director, Finance & Management Services — Date: 02/24/14
Agency: Health & Social Services

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. SSSB049AM

Analysis

This bill would limit funding of abortions for Medicaid eligible individuals to medically necessary abortions and abortions that are the result of rape or incest. The bill provides a statutory definition of medical necessity. Currently, Alaska Medicaid only pays for medically necessary abortions and abortions that are the result of rape or incest.

The Affordable Care Act (ACA) requires individuals with incomes above 100% of the federal poverty level (FPL) to purchase insurance through the Federally Facilitated Marketplace. These insurance plans include family planning as an essential health benefit. Individuals, primarily childless adults, with incomes at or below 100% FPL will not have access to family planning or related services, but are likely to be eligible should the State develop a Medicaid women's health program. The percentage of Alaska's population who will apply for and be eligible for insurance under ACA or who may wish access to a Medicaid women's health program is unknown. As a result, the Division of Public Assistance is unable to determine how many people would apply for a woman's health program.

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 49, relating to women's health services and defining "medically necessary abortion" for purposes of making payments under the state Medicaid program.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 49, relating to women's health services and defining "medically necessary abortion" for purposes of making payments under the state Medicaid program.

HOUSE CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 49(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS COGHILL, Olson, Kelly, Dyson, Micciche, Dunleavy, Giessel

REPRESENTATIVE Lynn

A BILL

FOR AN ACT ENTITLED

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

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

*** Section 1.** AS 47.07 is amended by adding a new section to read:

Sec. 47.07.068. Payment for abortions. (a) The department may not pay for abortion services under this chapter unless the abortion services are for a medically necessary abortion or the pregnancy was the result of rape or incest. Payment may not be made for an elective abortion.

(b) In this section,

(1) "abortion" has the meaning given in AS 18.16.090;

(2) "elective abortion" means an abortion that is not a medically necessary abortion;

(3) "medically necessary abortion" means that, in a physician's objective and reasonable professional judgment after considering medically relevant

factors, an abortion must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy;

(4) "serious risk to the life or physical health" includes, but is not limited to, a serious risk to the pregnant woman of

(A) death; or

(B) impairment of a major bodily function because of

(i) diabetes with acute metabolic derangement or severe end organ damage;

(ii) renal disease that requires dialysis treatment;

(iii) severe pre-eclampsia;

(iv) eclampsia;

(v) convulsions;

(vi) status epilepticus;

(vii) sickle cell anemia;

(viii) severe congenital or acquired heart disease, class IV;

(ix) pulmonary hypertension;

(x) malignancy if pregnancy would prevent or limit treatment;

(xi) kidney infection;

(xii) congestive heart failure;

(xiii) epilepsy;

(xiv) seizures;

(xv) coma;

(xvi) severe infection exacerbated by pregnancy;

(xvii) rupture of amniotic membranes;

(xviii) advanced cervical dilation of more than six centimeters at less than 22 weeks gestation;

(xix) cervical or cesarean section scar ectopic implantation;

(xx) any pregnancy not implanted in the uterine cavity;

(xxi) amniotic fluid embolus; or

(xxii) another physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy that places the woman in danger of death or major bodily impairment if an abortion is not performed.

Adopted 2/25/14

28-LS0410\Y
Mischel
4/13/13

HOUSE CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 49(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS COGHILL, Olson, Kelly, Dyson, Micciche, Dunleavy, Giessel

REPRESENTATIVE Lynn

A BILL

FOR AN ACT ENTITLED

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

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

*** Section 1.** AS 47.07 is amended by adding a new section to read:

Sec. 47.07.068. Payment for abortions. (a) The department may not pay for abortion services under this chapter unless the abortion services are for a medically necessary abortion or the pregnancy was the result of rape or incest. Payment may not be made for an elective abortion.

(b) In this section,

(1) "abortion" has the meaning given in AS 18.16.090;

(2) "elective abortion" means an abortion that is not a medically necessary abortion;

(3) "medically necessary abortion" means that, in a physician's objective and reasonable professional judgment after considering medically relevant

factors, an abortion must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy;

(4) "serious risk to the life or physical health" includes, but is not limited to, a serious risk to the pregnant woman of

(A) death; or

(B) impairment of a major bodily function because of

(i) diabetes with acute metabolic derangement or severe end organ damage;

(ii) renal disease that requires dialysis treatment;

(iii) severe pre-eclampsia;

(iv) eclampsia;

(v) convulsions;

(vi) status epilepticus;

(vii) sickle cell anemia;

(viii) severe congenital or acquired heart disease, class IV;

(ix) pulmonary hypertension;

(x) malignancy if pregnancy would prevent or limit treatment;

(xi) kidney infection;

(xii) congestive heart failure;

(xiii) epilepsy;

(xiv) seizures;

(xv) coma;

(xvi) severe infection exacerbated by pregnancy;

(xvii) rupture of amniotic membranes;

(xviii) advanced cervical dilation of more than six centimeters at less than 22 weeks gestation;

(xix) cervical or cesarean section scar ectopic implantation;

(xx) any pregnancy not implanted in the uterine cavity;

(xxi) amniotic fluid embolus; or

(xxii) another physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy that places the woman in danger of death or major bodily impairment if an abortion is not performed.

Not Allowed per Rep. Stoltze 2/27/14 offered by: Greg Guttenberg

AMENDMENT #1

OFFERED IN HOUSE FINANCE

TO: HOUSE CS for Sponsor Substitute for SB 49 (FIN)

Page 1, line 1, after "Act" insert "relating to women's health services and"

Page 1, line 4, insert a new section to read:

Section 1. AS 47.07.030 is amended by adding a new subsection to read:

(g) The department shall make available to eligible recipients a program for women's health for the purpose of providing family planning services, health screening examinations, and related services.

Page 3, line 6, insert a new section to read:

Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to read:

WOMEN'S HEALTH PROGRAM UNDER STATE MEDICAID. The Department of Health and Social Services shall immediately prepare and submit to the United States Department of Health and Human Services, for approval in accordance with the provisions of 42. U.S.C. 1396a (Title XIX, Social Security Act), an amendment to the state plan consistent with AS 47.07.030, enacted by sec. 1 of this Act.

2014 HOUSE FINANCE COMMITTEE VOTE SHEET

to move bill from committee

DATE: 2/27/14

Amendment: _____

MEMBER	Favor	Oppose
REP. COSTELLO	✓	
REP. EDGMON		✓
REP. GARA		✓
REP. GUTTENBERG		✓
REP. HOLMES		✓
REP. MUNOZ	✓	
REP. NEUMAN	✓	
REP. THOMPSON	✓	
REP. WILSON	✓	
REP. AUSTERMAN		✓
REP. STOLTZE	✓	

YEA 6 NAY 5

- ***Are we receiving the 90% federal match for all family planning services provided in Alaska that are not covered by Title X?***

  Yes. Family Planning services, receiving 90% Federal match, are limited in nature and fall into three categories: 1) the diagnosis of general reproductive health conditions, 2) the diagnosis of sexually transmitted infections (STD), and 3) contraception. However, Family Planning **related** services, such as the treatment of the conditions diagnosed, receive the normal Federal participation rate of 50% even if treated at a Family Planning Clinic. For example, an individual could have a routine testing and diagnosis of an STD and receive 90% match for those services, while the actual medication for treatment and follow-up would receive 50% match.

- ***Side-by-side comparison of the services offered by Alaska DHSS and any services provided for under the State Plan Amendment for Family Planning Services offered by the Federal Government with a 90% federal match***

  The following table shows Family Planning services currently covered by the State of Alaska alongside those offered through a possible expansion of services.

Currently covered Family Planning services in the State of Alaska	Possible Family Planning services not currently covered in the State of Alaska
Diagnosis: General Reproductive Health	
Amenorrhea	
Cervical Cancer	
Female Reproductive Cancers	
Infertility	
Male Reproductive Cancers	
Pap Test	
Urinary Tract Infections	
Vaginal Discharge	
Diagnosis: Sexually Transmitted Infections	
Bacterial Vaginosis	
Chlamydia	
Gonorrhea	
Hepatitis B	
Hepatitis C	
Herpes	
HIV	
HPV	
Pelvic Inflammation Disease	
Syphilis	
Trichomoniasis	
Contraception:	**Sterilization Procedures:**
Birth Control Pills	Vasectomy Reversals
Cervical Cap	
Diaphragm	
Emergency Contraception	
Female Condoms	

Submitted by Sponsor

Department of HEALTH & SOCIAL SERVICES

Female Sterilization	
Implantable Rods	
IUD	
Male Condoms	
Male Sterilization	
Natural Family Planning	
Contraceptive Patch	
Contraceptive Shot	
Spermicide	
Sponge	
Vaginal Ring	
*Other Cancer Screening and Prevention:	Other Cancer Screening and Prevention:
Mammogram	HPV Vaccine for adults 21 to 26
Pap Testing	
Colposcopy	
*Preconception Care:	Preconception Care:
Gynecologic Exams	Contraceptive Counseling
	Reproductive Health Education
	Preconception Counseling
	Infertility Treatment

*Other Cancer Screening and Prevention services and Preconception Care are sometimes covered as Family Planning services depending on the nature of the visit. If they are considered Family Planning, they receive 90% Federal match.

- ***What is the status of family planning services in Alaska? Specifically:***
  - ***How many women are served?***

    Within the Division of Public Health, approximately 7,500 women statewide were provided family planning services through Public Health clinics and direct grants to organizations under the Federal Title X Program.

    Within the Medicaid program, an average of 5,711 unique individuals (women) have received family planning services over the past four fiscal years as indicated in the following chart:

State Fiscal Year	Total Recipients	Total Cost per Recipient*	Cost Per Recipient**
2013	5,619	$ 772	$ 703
2012	5,948	$ 682	$ 669
2011	5,877	$ 702	$ 670
2010	5,562	$ 724	$ 725
2009	5,146	$ 683	$ 625
2008	4,872	$ 511	$ 621
2007	5,227	$ 561	$ 621
2006	5,694	$ 430	$ 360
2005	5,895	$ 370	$ 318
2004	5,710	$ 330	$ 306

*Adjusted to include administrative accruals.
**Raw cost per female recipient.

  - ***With what services?***

    Through the Division of Public Heath, the following services are provided:
    - Clinical breast examinations, PAP smear screening and pelvic examination;

- Counseling and screening for sexually transmitted infections and contraceptive methods;
- Counseling and referral for contraception services for males and females;
- Access to the full range of current, FDA-approved contraceptive methods and supplies to their family planning clients;
- Counseling and education on reproductive and preventive health topics, including abstinence education, parental involvement in the family planning decisions of minor clients, sexually transmitted disease/HIV prevention and risk reduction;
- Education, counseling, and referral for pregnancy care;
- Screening, counseling, and education for intimate partner violence and other unhealthy relationships and behaviors; and
- Mandatory reporting for sexual abuse of a minor and human trafficking.

Within the Medicaid program, services include family planning counseling and medical services related to birth control medications and devices. Medicaid also covers many over-the-counter birth control items such as contraceptive creams, gels, foams, and condoms if your health care provider writes a prescription for them. These supplies also are available from family planning clinics in larger towns. All women and men can receive family planning services at public health centers statewide.

Medicaid covers family planning services for women enrolled with Denali KidCare for 60 days after the birth of their child. These women can receive family planning services and supplies from any enrolled Medicaid provider statewide. Copay is not required for family planning services and supplies.

- Condoms
- Spermicide
- Sponges
- Female condom
- Tubal ligation/postpartum
- Tubal ligation/interval
- Vasectomy
- Testing for cervical cancer, sexually transmitted diseases, and HIV
- PAP Smear
- Pregnancy testing
- Contraceptive services (including emergency contraceptives, oral contraceptives, intrauterine devices, intrauterine device removal, implants, implant removal, injectable, diaphragm)
- Pelvic exams
- Screening for cervical and breast cancer
- Screening for high blood pressure, anemia, and diabetes
- Screening for sexually transmitted diseases and HIV/AIDS
- Health education

- Referrals for other health and social services
- PAP-LAB

- ***What gaps do we have in coverage for women in terms of family planning services in Alaska?***
  All family planning services provided by the Division of Public Health are available to individuals in need of these services, regardless of income level. There are coverage gaps in terms of access to family planning healthcare providers in rural areas of the state, plus geographical barriers for individuals living in those areas that must travel, sometimes long distances, to a clinic which can and will provide services.

- ***What is the federal reimbursement for these services?***
  The Division of Public Health receives 90% federal reimbursement for its family planning services under Title X.

  Within the Medicaid program, federal reimbursement for these services is at a 90% federal participation rate (unless it is claimed through Indian Health Services which increases the federal rate to 100%). In past years, we may not have received the 90% rate due to the aging MMIS system used to process claims. The new Medicaid Management Information System will have the functionality to claim expenditures at the maximum rate.

- ***How much have we expended in the past 10 years?***
  The Division of Public Health has expended approximately $5,000.0 in federal funding under Title X and $2,000.0 in general funds for public health clinics for FY2004-FY2013.

  Within the Medicaid Program, over $41,000.0 has been spent on family planning over the past ten years, as is indicated in the following chart:

State Fiscal Year	State Portion	Federal Portion	Total Spending*
2013	$ 433,949	$ 3,905,542	$ 4,339,491
2012	$ 405,631	$ 3,650,681	$ 4,056,312
2011	$ 412,319	$ 3,710,867	$ 4,123,186
2010	$ 402,738	$ 3,624,645	$ 4,027,383
2009	$ 351,605	$ 3,164,448	$ 3,516,053
2008	$ 249,187	$ 2,242,684	$ 2,491,871
2007	$ 293,481	$ 2,641,325	$ 2,934,806
2006	$ 244,846	$ 2,203,617	$ 2,448,463
2005	$ 218,081	$ 1,962,731	$ 2,180,812
2004	$ 188,316	$ 1,694,845	$ 1,883,161
TOTAL	$ 4,071,065	$ 37,243,159	$ 41,314,224

*Amount reported to the Center for Medicaid & Medicare Services (CMS).

National
Family Planning
& Reproductive Health Association

Testimony of Robin Summers
National Family Planning & Reproductive Health Association

Submitted to the
House Finance Committee

Re: Medicaid Family Planning State Plan Amendment

February 25, 2014

Chairman Austerman, Chairman Stoltze, members of the House Finance Committee, good afternoon. My name is Robin Summers and I am a Senior Policy Director with the National Family Planning & Reproductive Health Association (NFPRHA). NFPRHA is a national membership organization representing the nation's family planning providers—nurse practitioners, nurses, administrators and other key health care professionals. NFPRHA's members operate or fund a network of nearly 5,000 health centers and service sites that provide high-quality family planning and other preventive health services to millions of low-income, uninsured, or underinsured individuals around the country, including Alaska.

I am pleased to be speaking with the Committee today about the importance of expanding Alaska's Medicaid eligibility for family planning services through a state plan amendment (SPA). I respectfully request that my written statement be submitted for the record.

Public health providers, scholars and advocates, and federal lawmakers agree: family planning is cost-saving preventive health care for women and men. The Centers for Disease Control and Prevention (CDC) has cited family planning as one of the ten great public health achievements of the 20th century, stating, "Smaller families and longer birth intervals have contributed to the better health of infants, children, and women, and have improved the social and economic role of women."[i]

Access to family planning has improved the social and economic lives of women and families, prevented unintended pregnancies and the transmission of sexually transmitted diseases, including HIV/AIDS, and decreased infant, child and maternal deaths. These public health, education, and economic gains are even bigger in poor and low-income communities which traditionally lack access to basic health care.

In the 1990s, states began broadening eligibility for their Medicaid programs to provide family planning services and supplies to individuals who are not otherwise eligible for Medicaid.[ii] Originally these expansions were done through a Medicaid waiver authorized by §1115 of the Social Security Act, but the Affordable Care Act (ACA) gave states the option to amend their state Medicaid plans to

expand eligibility for family planning services and supplies to individuals who are not pregnant and who have an income that does not exceed the income-eligibility level set by the state for coverage for pregnancy-related care. Today, 30 states have chosen to expand Medicaid eligibility for family planning; 12 of those states have received approval to operate their family planning expansions through a SPA.[iii]

Medicaid family planning expansion programs provide a broad range of family planning and family planning-related services, including the full range of contraceptive methods, pap tests, and other associated examinations and laboratory tests. A Medicaid family planning SPA does not cover abortion. Recognizing the value of family planning, the federal government reimburses these services and supplies at an enhanced matching rate of 90% .

Medicaid family planning expansion programs are proven to save states money by expanding access to contraception and increasing women's contraceptive use of more effective contraceptive methods—essential factors in reducing high rates of unintended pregnancy among low-income women.[iv] According to the Guttmacher Institute, in 2010, publicly funded family planning services helped women avoid 2.2 million unintended pregnancies, which would likely have resulted in about 1.1 million unintended births and 760,000 abortions.[v] Additionally, improved contraceptive use has helped women to plan and space their pregnancies, which has positive implications for the health of pregnant women and newborns and the economic and social well-being of families. [vi]

Medicaid family planning expansion programs make family planning services more accessible. Health centers in states with Medicaid family planning expansions are more likely to provide patients with a broad range of contraceptive options and to have extended service hours than health centers in other states.[vii] They are also less likely to report difficulty stocking certain contraceptive methods due to cost.[viii] Medicaid family planning expansion programs also improve the geographic availability of services and broaden private physician participation in the provider network.[ix]

Family planning health centers in states with Medicaid family planning expansions serve one-third more women in need of care, compared to health centers in other states.[x] In 2006, family planning health centers in states with income-based Medicaid family planning expansions served 48% of women in need, compared to 36% of women in need in other states.[xi]

Publicly funded family planning services not only improve public health, they save taxpayer dollars while doing it. The Guttmacher Institute finds that every $1.00 spent on publicly funded family planning saves $5.68 in Medicaid expenditures that otherwise be needed to be spent related to unintended pregnancies.[xii] The Brookings Institution estimates that Medicaid family planning expansion programs save taxpayers $1.32 billion annually.[xiii] Births resulting from unintended pregnancy cost US taxpayers approximately $12.5 billion annually.[xiv] Without publicly funded family planning services, these costs would be doubled—costing taxpayers $25 billion a year.[xv]

In 2010, 37,400 women in Alaska were in need of publicly supported contraceptive services and supplies.[xvi] 7,000 pregnancies in Alaska were unintended in 2008, 47% of all pregnancies in the

state.[xvii] In 2008, there were 11,400 births in Alaska;[xviii] 4,500 (40%) resulted from unintended pregnancies,[xix] and 5,900 (52%) were paid for by Medicaid.[xx] In total, there were 3,000 publicly funded births in Alaska in 2008 that resulted from unintended pregnancies,[xxi] representing 26% of all births in the state, 51% of the state's Medicaid-funded births, and 67% of the births resulting from unintended pregnancies. The cost to the state and federal government of births resulting from unintended pregnancies was $71 million in 2008; of that, $34 million was paid for by Alaska.[xxii]

Implementing a Medicaid family planning expansion has been a proven, successful strategy to combat unintended pregnancy and save public dollars for many states, and would be a wise investment for Alaska. According to a 2011 projection from the Guttmacher Institute, implementing a Medicaid family expansion SPA in Alaska could help the state provide family planning services to up to 9,200 individuals annually, helping women and couples avoid up to 1,310 unintended pregnancies per year, which might otherwise result in 430 abortions and 680 births, resulting in a potential net savings of $10.7 million a year, including $7 million for Alaska.[xxiii]

A Medicaid family planning SPA is not duplicative of the coverage Alaska currently provides to categorically eligible individuals in the state's Medicaid program. Although family planning services are a mandatory benefit of the Medicaid program, Medicaid eligibility in Alaska is currently limited to specific categories of persons (including working parents, disabled individuals, and pregnant women). Childless adults do not qualify for full-benefit Medicaid in Alaska, and consequently do not have access to Medicaid-funded family planning.

A Medicaid family planning SPA would expand eligibility for family planning services under Medicaid in two ways: it would expand eligibility to all individuals not currently categorically eligible for Medicaid; it would also expand the income eligibility threshold, up to the level the state has set for pregnancy-related care. Today, a single mother with one child (working parent, household of 2) is eligible for Medicaid if she earns less than $2,111 per month. However, eligibility for that same single mother with one child, if she becomes pregnant, goes up to $4,124 per month during her pregnancy. A childless adult is not eligible at all, unless she has a qualifying condition (e.g. disabled). A Medicaid family planning SPA would provide family planning services to childless adults who are not otherwise eligible for Medicaid, as well as to those single mothers with incomes that fall in the gap between $2,111 and pregnancy eligibility.

Further, a Medicaid family planning SPA is not duplicative of the ACA's coverage expansion, but is in fact a compliment to it that will help states meet what is sure to be a growth in health care demand, particularly from individuals who have traditionally lacked health care coverage. Although the ACA will expand insurance coverage to millions, there will still be significant coverage gaps—even if Alaska ultimately decides to move forward with the ACA's expansion of Medicaid to individuals with incomes up to 138% FPL—and Medicaid family planning expansion programs remain a cost-effective means of providing essential health services post-ACA implementation.

An estimated 30 million people were left out of the ACA's coverage provisions,[xxiv] many of whom are poor or low-income and who will continue to need and seek publicly funded health services.

Moreover, evidence from Massachusetts, a state that is several years farther down the road to health care reform than the country as a whole, shows that even with "universal" coverage, there will be coverage gaps. According to the Guttmacher Institute, although only 2% of all Massachusetts residents were uninsured in 2010 (compared with over 6% in 2006), 3 in 10 clients who sought care at family planning centers in Massachusetts in 2011 "either had no insurance coverage or had coverage they could not use for their care."[xxv] A new report published by the CDC echoes these findings, detailing how in the 6 years following health reform in Massachusetts, many individuals continued to need and seek publicly funded family planning care.[xxvi]

There will be individuals without coverage because they are cycling on and off of insurance coverage due to changing life circumstances - they lost their job, their income level fluctuates, they get married or divorced, all of which can affect someone's insurance eligibility and status—in a process known as "churning." These are people our member-health care providers encounter every day. The woman in her early thirties who lost her job and, with it, her employer-sponsored insurance coverage or her ability to pay for the insurance she was paying for out of her own pocket. Or the woman in her twenties who works two retail jobs, whose hours, and therefore monthly income, fluctuates depending on how good business. Or the woman who was eligible for Medicaid when she was single, but whose new husband makes slightly too much money for her to qualify for Medicaid but not enough to afford to buy insurance.

Furthermore, while eligibility for full-benefit Medicaid and the ACA's subsidies to purchase commercial insurance is based on family income, Medicaid family planning SPAs often allow individuals to qualify for services based on their own, individual income, as opposed to that of their family. This means that individuals who may not be able to access full-benefit Medicaid or commercial insurance coverage because their family income is too high may still be able to qualify for and receive services through a Medicaid family planning SPA based on their individual income level.

Although many people are likely to have a pathway to coverage under the ACA, there is a sizable group of individuals for whom regular insurance processes fail, for the reasons I outlined and more. Medicaid family planning SPAs provide a stop-gap measure to help ensure continued access to family planning for millions of low-income individuals.

Additionally, even with the ACA's new women's preventive health services benefit, women may not have access to the contraceptive methods and services most effective for them. The ACA requires new commercial insurance plans to cover a range of women's preventive health services, including all FDA-approved contraceptive methods, counseling, and an annual well-woman visit. However, current rules regarding this benefit give some flexibility to insurance plans, which are doing things like tiering services (i.e. the patient can only access generics, or certain brands and/or supply types) or even excluding certain methods, such as intrauterine devices (IUDs) and other long-acting contraceptive methods. Medicaid family planning expansion programs provide a broad range of contraceptive method options, helping to ensure that women can choose and access the method that is most effective for them - saving taxpayer dollars that might otherwise be spent on unintended pregnancy.

Full implementation of the ACA will take years. Family planning is a preventive service and should not be inaccessible because of the administrative burdens required to implement national health reform. Medicaid family planning SPAs ensure continuity of services and supplies necessary to prevent unintended pregnancy while people are being enrolled into coverage under the ACA.

Finally, I would re-emphasize that Medicaid family planning expansion programs are money-savers. Since Medicaid is a payer of last resort, Medicaid family planning expansions only pay for services not otherwise paid for, and save states money while doing it. Implementing a Medicaid family planning SPA would give Alaska's health care providers a critical tool to help provide essential health care services to women and men in need of these services, leading to a healthier state while saving taxpayer dollars.

Thank you for inviting me to testify on this important issue, and I look forward to answering your questions.

---

[i] US Centers for Disease Control and Prevention, *Ten Great Public Health Achievements -- United States, 1900-1999*, Morbidity and Mortality Weekly Report, April 2, 1999, http://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm.
[ii] Rachel Benson Gold, "Back to Center Stage: ACA Decision Gives New Significance to Medicaid Family Planning Expansions," *Guttmacher Policy Review*, Fall 2012, Volume 15, Number 4, http://www.guttmacher.org/pubs/gpr/15/4/gpr150413.html.
[iii] California, Connecticut, Indiana, New Hampshire, New Mexico, New York, Ohio, Oklahoma, South Carolina, Virginia, and Wisconsin are all operating family planning SPAs. North Carolina's SPA goes into effect April 30, 2014.
[iv] Adam Sonfield and Rachel Benson Gold, *Medicaid Family Planning Expansions: Lessons Learned and Implications for the Future*, Guttmacher Institute, December 2011, http://www.guttmacher.org/pubs/Medicaid-Expansions.pdf.
[v] Jennifer Frost, Mia Zolna, and Lori Frohwirth, *Contraceptive Needs and Services, 2010*, Guttmacher institute, July 2013, http://www.guttmacher.org/pubs/win/contraceptive-needs-2010.pdf .
[vi] Gold, "Back to Center Stage: ACA Decision Gives New Significance to Medicaid Family Planning Expansions."
[vii] Jennifer Frost et al., *Variation in Service Delivery Practices Among Clinics Providing Publicly Funded Family Planning Services in 2010,* May 2012, http://www.guttmacher.org/pubs/clinic-survey-2010.pdf.
[viii] Ibid.
[ix] Sonfield and Gold, *Medicaid Family Planning Expansions: Lessons Learned and Implications for the Future.*
[x] Rachel Benson Gold et al., *Next Steps for America's Family Planning Program: Leveraging the Potential of Medicaid and Title X in an Evolving Health Care System*, Guttmacher Institute, 2009, http://www.guttmacher.org/pubs/NextSteps.pdf.
[xi] Ibid.
[xii] Guttmacher Institute, "Facts on Publicly Funded Contraceptive Services in the United States," July 2013, http://www.guttmacher.org/pubs/fb_contraceptive_serv.html.
[xiii] Adam Thomas, *Policy Solutions for Preventing Unplanned Pregnancy*, Brookings Institution, March 2012, accessed March 7, 2013, http://www.brookings.edu/research/reports/2012/03/unplanned-pregnancy-thomas.
[xiv] Adam Sonfield and Kathryn Kost, "The Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy and Infant Care: Estimates for 2008," Guttmacher Institute, http://www.guttmacher.org/pubs/public-costs-of-UP.pdf.
[xv] Ibid.
[xvi] Guttmacher Institute, *State Facts About Unintended Pregnancy: Alaska*, accessed February 24, 2014, http://www.guttmacher.org/statecenter/unintended-pregnancy/AK.html.
[xvii] Ibid.
[xviii] Sonfield and Kost, "The Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy and Infant Care: Estimates for 2008."
[xix] Guttmacher Institute, *State Facts About Unintended Pregnancy: Alaska.*
[xx] Sonfield and Kost, "The Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy and infant Care: Estimates for 2008."
[xxi] Ibid.
[xxii] Guttmacher Institute, *State Facts About Unintended Pregnancy: Alaska.*
[xxiii] Adam Sonfield, Jennifer Frost, and Rachel Benson Gold, "Estimating the Impact of Expanding Medicaid Eligibility For Family Planning Services: 2011 Update," January 2011, http://www.guttmacher.org/pubs/Medicaid-Family-Planning-2011.pdf. It should be noted that these estimates were made prior to the US Supreme Court's 2012 decision making the ACA's Medicaid expansion effectively optional for states, and would likely be different in a post-Supreme Court decision environment.
[xxiv] Congressional Budget Office, *Payments of Penalties for Being Uninsured Under the Affordable Care Act*, September 2012, http://www.cbo.gov/publication/43628.

[xxv] Gold, "Back to Center Stage: ACA Decision Gives New Significance to Medicaid Family Planning Expansions."
[xxvi] Marion Carter et al., "Trends in Uninsured Clients Visiting Health Centers Funded by the Title X Family Planning Program—Massachusetts, 2005-2012," Morbidity and Mortality Weekly Report, January 24, 2014, 63(03); 59-62, Centers for Disease control and Prevention, http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6303a3.htm?s_cid=mm6303a3_w.

Theda S. Pittman
1641 Eastridge Drive, #102, Anchorage, AK 99501
907-222-5974; tspittman@gci.net

2/25/14

RE: SS SB49 am & HB 173
Thank you Mr. Chairman and members of House Finance.

We agree that we want fewer abortions to be performed. We disagree on the best ways to accomplish that goal; the acceptable ways to accomplish that goal; whether public funds should be used if the pregnant girl or woman is on Medicaid.

Before the Legislature started meeting again last month, public officials were casting serious warnings about the fact that we have to be much more careful in spending public money. I think we agree about that too.

There is too much public money being wasted and both of these proposals have already wasted time and money unnecessarily.

In spite of the court case challenging essentially the same language which is in regulations, Senator Coghill –sponsor of SB49, is described in the news as pressing forward, regardless of the lawsuit because laws hold more weight than regulations. And he says it's also a fiscal conservative issue.

In this instance, Legislators who want to behave in a fiscally conservative way should put these 2 bills in the drawer until we find out what the court says.

If the court upholds the regulations, then the bills are unnecessary and it's been a waste of time and money to bring them this far into the process.

If the court strikes down the regulations as unconstitutional, then the decision will have to be analyzed to understand whether or what guidance the decision provides as to how broadly the term 'medically necessary abortion' is to be construed. And, these bills will have to be sent back down the line for re-drafting, and to start the process all over again. Another waste of time and money.

Please be fiscally prudent and hold these bills where they are until you have the necessary information for an informed decision about whether to move them forward or send them back to the drafters.

Thank you.

KENAI LEGISLATIVE INFORMATION OFFICE

Email: Kenai_LIO@akleg.gov

Phone: 907-283-2030 / Fax: 907-283-3075

WRITTEN TESTIMONY

NAME:	Bethany Swenson
REPRESENTING:	Self
BILL # or SUBJECT:	SB 49
COMMITTEE:	House Finance DATE: 2-25-14

Women have the reproductive right to choose abortion. The reasons for choosing an abortion and the circumstances under which a woman becomes pregnant do not matter. It is her choice and no one else's. It is her right to manage her reproductive ability and control what happens to her body, which are examples of autonomy (http://www.merriam-webster.com/medlineplus/autonomy). A woman has her reasons. Her reasons and rights outweigh those of the created life.

Abortion is medical care. If early enough in the pregnancy, medication can be administered to cause an abortion. The drug is called mifepristone (http://www.merriam-webster.com/medlineplus/ru-486). It must be prescribed and administered. It cannot be purchased over-the-counter. Later pregnancies require a D & C, a medical procedure.

I understand that in the medical community, a "therapeutic" abortion is one in which the pregnancy should be ended because of some health complication (http://www.merriam-webster.com/medlineplus/therapeutic%20abortion). However, I don't think that choosing an abortion for any other reason makes it "unnecessary." Abortion is not like electing for breast augmentation. It has the paradoxical nature of being both elective and necessary. Any woman can choose to abort. Any woman can choose to carry on with a pregnancy and/or become a mother. I have known women who chose to be mothers to children conceived from rape. Even women with high health risks for pregnancy and birth may choose to carry on, against medical advice. Such a decision made against medical advice is an exercise of autonomy, an ethical principle well known in the medical profession. It's about choice. Once an abortion is chosen it becomes necessary. The pregnancy is not going to end by a woman simply wishing it so - a medical treatment must be given. Any woman can talk with her doctor about making a decision that is best for her health, both her mental health and the health of the rest of her body.

Abortion should be accessible if it is truly a choice. If a woman cannot afford an abortion, she cannot have one and therefore she essentially doesn't have a choice. Women on Medicaid are poor. They already can't pay for most of their medical care; that is why they are on Medicaid. The proposed restrictions will force many poor women on Medicaid to bear children against their wishes, simply because they will be denied coverage and cannot afford the abortions themselves. "Studies published over the course of two decades looking at a number of states concluded that 18–35% of women who would have had an abortion continued their pregnancies after Medicaid funding was cut off" (http://www.guttmacher.org/pubs/gpr/10/1/gpr100112.html). It should be obvious that a woman who decides on abortion but is denied one is harmed in health, both the psychological health of the brain and the rest of her body. The proposed restrictions sabotage the right to choose.

Furthermore, it is judgmental and unfair to cherry-pick the reasons why an abortion should be covered by Medicaid. The reasons and circumstances do not matter, because it's about a woman's unique choice. Every choice is equal and should be equally covered. It does not matter if the woman didn't use contraception, contraception failed, contraception was sabotaged, sterilization failed, the woman was raped, or a doctor is telling a woman that she might die if her pregnancy is not ended. The reasons and circumstances should not be favored one over the other. Favoring against equality is defined as injustice. Justice is fair treatment of all.

Alaska provides its own funds for Medicaid. It is not required to follow the lead of the unjust Hyde Amendment. Medicaid coverage of abortion should not be restricted, it should be expanded.

I strongly urge you to oppose these bills and, despite your personal opinions and beliefs, to not interfere with women's autonomy. The proposed restrictions are unconstitutional and will harm many women.

Louise Taylor-Thomas

From: Eric McCallum <ericmccallum5@gmail.com> on behalf of Eric Mccallum <mccallum@alaska.net>
Sent: Saturday, April 13, 2013 11:03 AM
To: Louise Taylor-Thomas
Subject: SB 49

I want to thank the committee for allowing me this opportunity to testify against SB49. I will address cost concerns, medical consequences and the definition of medically necessary.

First I would respectfully like to remind the committee that these abortions are not paid with an individual's hard earned tax dollars. They will be paid from our oil tax revenue. I believe this allows for a broader use of these funds. This bill will deny a woman's her own medical choices. And if this bill passes there will be more prenatal care, pregnancies and well-baby check-ups that will need to be paid for by Medicaid. So this bill will create a net financial loss for Alaska.

Additionally, if passed SB 49 will be challenged in court because as many have testified it unconstitutional according to previous Alaska Supreme Court decisions.
The estimated court costs are $1M. That money would be better spent on the Medicaid Family Planning program in the new amendment to this bill. It will prevent unintended pregnancies that lead to the abortions addressed in this bill.

Second. What is "medically necessary" and who should decide? Is prenatal care really "medically necessary" or do we provide this care for the benefit of the mother and fetus. Are vaccinations medically necessary? Or are they there to prevent bad outcomes? If a woman chooses to not report a rape does that make the abortion elective? Are we planning on defining "medically necessary" for all healthcare? Because I do not want government determining whether my healthcare is "medically necessary" or not.

I believe men feel the same way. Recently, treatment of prostate cancer has become controversial. Do the gentlemen on this committee really want the government determining their treatment if they have prostate cancer? Or do you want your physician helping you make those choices?

Finally, an abortion costs approximately $700. For women already on the edge financially this is a huge problem. SB 49 will force some women who want an abortion to carry their pregnancy to term, they may delay care, attempt to abort on their own or consider suicide. And we now know that women in Alaska commit suicide at twice the national average. We forget that before abortion was legalized many women died or were permanently damaged by self-induced abortions.

Nothing I say will change anyone's beliefs here today. Nor should it. Every one is entitled to their own beliefs. But just as none of us wants a woman to be forced to have an abortion, I do not want a woman forced to carry a pregnancy to term and potentially risk her health.

A few problems with forcing a woman to continue a pregnancy are:

- It is potentially not good for the woman or the fetus if the woman delays or doesn't seek appropriate prenatal care, or continues with an addiction or risky behavior. These may cause complicated deliveries, premature births and potential birth defects. All adding to our Medicaid cost
- Domestic Violence is a huge problem in Alaska. Pregnancy often makes domestic violence worse, putting the woman at greater risk.
- It would force a woman to carry to term a child who may be born with severe anomalies such as anencephaly.

Please respect all women. Don't limit healthcare access for women who really need it. Please stop this bill.

Robin Smith
14100 Jarvi Drive <x-apple-data-detectors://1> Anchorage, Ak <x-apple-data-detectors://1>
99515 <x-apple-data-detectors://1>

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049SS(am)-DHSS-HCMS-02-24-14
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance Committee

Department: Department of Health and Social Services
Appropriation: Medicaid Services
Allocation: Health Care Medicaid Services
OMB Component Number: 2077

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2015**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	**0.0**	***	***	***	***	***
Fund Source (Operating Only)							
None							
Total	***	**0.0**	***	***	***	***	***
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/15

Why this fiscal note differs from previous version:

Fiscal Note has been updated to reflect the Affordable Care Act (ACA) requirement that individuals purchase health insurance and the ACA mandate that those insurance policies offer Essential Health Benefits, which include Family Planning Services.

Prepared By: Margaret Brodie — Phone: (907)334-2520
Division: Health Care Services — Date: 02/24/2014 12:00 PM
Approved By: Sarah Woods, Deputy Director, Finance & Management Services — Date: 02/24/14
Agency: Health & Social Services

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. SSSB049AM

Analysis

This bill would limit funding of abortions for Medicaid eligible individuals to medically necessary abortions and abortions that are the result of rape or incest. The bill provides a statutory definition of medical necessity. Currently, Alaska Medicaid only pays for medically necessary abortions and abortions that are the result of rape or incest.

It is possible that use of specific criteria for medical necessity could reduce the number of abortions qualified for state funding. However, the Department lacks the data needed to estimate how many abortions would fail to meet the bill's definition of medical necessity. Therefore, we cannot determine the impact on expenditures.

The legislation directs the department to submit a Medicaid State Plan Amendment to create a women's health program. A women's health program would include family planning-related services, including testing and treatment of sexually-transmitted diseases, contraceptive methods, and an annual family planning visit at an office/clinic. We assume that these services will be available to individuals with incomes below 175% of the federal poverty level (FPL) for Alaska. According to the current population estimates from the U.S. Census Bureau, approximately 14,000 women in Alaska ages 19-44 are estimated to be uninsured and below this income level. The annual cost per individual accessing family planning services is estimated at $800 per person. Direct services costs are at a 90/10 federal match rate. The fiscal note excludes women currently eligible for family planning services under Medicaid/Denali KidCare.

The Affordable Care Act (ACA) requires individuals with incomes above 100% FPL to purchase insurance through the Federally Facilitated Marketplace. These insurance plans include family planning as an essential health benefit. This coverage is likely eligible for 100% premium reimbursement through the Affordable Care Act.

Women whose income falls between 100% and 175% of FPL are required to purchase health insurance through the Marketplace, but would likely also be eligible for the Medicaid women's health program, should Alaska offer one. There would be financial incentive for individuals in this income level to apply for Medicaid coverage of family planning services, rather than apply for the required Marketplace insurance coverage. While cost is largely subsidized, premiums are paid up front and reimbursed upon filing of a person's tax returns. While the federal government states that those who must apply for Marketplace insurance but do not will be assessed a gradually escalating annual fine, it is not yet clear how this requirement will be enforced or what effect that may have on Medicaid enrollment in Alaska.

The Division of Health Care Services is unable to determine how many people would apply for a women's health program or how many unintended pregnancies might be averted by the establishment of a women's health program.

Regulations would need to be developed should the Bill and accompanying amendment become law, with no particular additional cost associated (absorbed within cost of ongoing Medicaid regulations change).

2014 HOUSE FINANCE COMMITTEE VOTE SHEET

Adopted CSSB 49(FIN)

DATE: _____

Amendment: _____

MEMBER	Favor	Oppose
REP. HOLMES		✓
REP. MUNOZ	✓	
REP. NEUMAN	✓	
REP. THOMPSON	✓	
REP. WILSON	✓	
REP. COSTELLO	✓	
REP. EDGMON	✓	
REP. GARA		✓
REP. GUTTENBERG		✓
REP. AUSTERMAN	✓	
REP. STOLTZE	✓	

YEA 8 NAY 3

Darrell Breese

From:	Joshua Decker <JDecker@acluak.org>
Sent:	Monday, February 24, 2014 11:51 PM
To:	Rep. Alan Austerman; Rep. Bill Stoltze; Rep. Mark Neuman
Cc:	Rep. Mia Costello; Rep. Bryce Edgmon; Rep. Lindsey Holmes; Rep. Cathy Munoz; Rep. Steve Thompson; Rep. Tammie Wilson; Rep. Les Gara; Rep. David Guttenberg; Rep. Mike Hawker; Rep. Scott Kawasaki; Sen. John Coghill; Rep. Gabrielle LeDoux
Subject:	SB 49 & HB 173 - ACLU Review
Attachments:	Austerman & Stoltze & Neuman. SB 49 & HB 173. ACLU Review. 2014.02.24.pdf

Co-Chairs Austerman and Stoltze, and Vice-Chair Neuman,

We hope that you are well. Attached is the ACLU of Alaska's testimony about Senate Bill 49 and House Bill 173, which propose to define "medically necessary" for Medicaid-funded abortions.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. In that context, we appreciate the opportunity to testify about the proposed legislation's many constitutional infirmities.

If you cannot read our testimony or if you have any questions, please let us know. We are happy to answer any questions that the Members of the Committee might have.

Best regards,

Joshua A. Decker
Interim Executive Director
ACLU of Alaska
1057 W. Fireweed Ln, Ste. 207
Anchorage, AK 99503
■ direct 907.263.2002 ■ jdecker@acluak.org
■ office 907.258.0044 ■ fax 907.258.0288
■ cell 907.268.4798
www.acluak.org

Please update your address book: our email addresses have changed to @acluak.org

ACLU
AMERICAN CIVIL LIBERTIES UNION of ALASKA

Because Freedom Can't Protect Itself

February 24, 2014

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
1057 W. FIREWEED LANE, SUITE 207
ANCHORAGE, AK 99503
TEL: 907-258-0044
FAX: 907-258-0288
ACLUAK.ORG

The Honorable Alan Austerman, Co-Chair
The Honorable Bill Stoltze, Co-Chair
The Honorable Mark Neuman, Vice-Chair
House Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801
by email: Rep.Alan.Austerman@akleg.gov
Rep.Bill.Stoltze@akleg.gov
Rep.Mark.Neuman@akleg.gov

Re: SB 49 and HB 173: Reproductive Health Funding
ACLU Analysis of Financial and Constitutional Issues

Dear Co-Chairs Austerman and Stoltze, and Vice-Chair Neuman:

Thank you for the opportunity to testify about the Sponsor Substitute for Senate Bill 49, as amended, and House Bill 173, both of which impermissibly seek to strip funding for needed medical services in an important area of women's health. On April 11, 2013, we submitted written testimony to the House Finance Committee on SB 49; because of new developments, we submit this updated testimony and again reiterate our opposition to both bills.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. We engage in public advocacy and education to further those rights, and—when necessary—would litigate when those rights are attacked. In that context, we write to advise you that these bills are unconstitutional or, at best, academic nullities, and—of specific importance to this Committee—if enacted, the State would likely incur and be ordered to pay hundreds of thousands of dollars in attorney's fees and costs arising out of the inevitable constitutional challenge.

1. The State Has Spent Almost $1 Million in Repeated, Unsuccessful Attempts to Unconstitutionally Limit Women's Reproductive Rights.

As we more fully explain below, SB 49 and HB 173 are—quite plainly—unconstitutional. Passage of either or both bills would entangle the State in lengthy and complex litigation. As Members of this Committee are aware, this would not be the first time, or even the second, that these issues have been litigated. Indeed, the Department of Health and Social Services promulgated a regulation similar to these bills earlier this year, and this regulation is currently in litigation before the Anchorage Superior Court.[1]

Apart from this current constitutional challenge, the State of Alaska has been sued multiple times over its repeated attempts to limit a woman's constitutional right to reproductive autonomy. In addition to the Medicaid medically-necessary abortion case of *State, Department of Health & Social Services v. Planned Parenthood of Alaska, Inc.*,[2] the now-unconstitutional Parental Consent Act spawned a lawsuit, and multiple appeals, which lasted over ten years.[3]

Putting aside what the State had to pay its own attorneys and its other internal costs of defending those suits, it paid the successful plaintiffs $514,153.58 plus interest (or $674,905.82 plus interest in 2014 dollars) for these two unconstitutional actions: $236,026.16 plus interest (or $320,897.38 plus interest in 2014 dollars) in the *State, Department of Health & Social Services* Medicaid medically-necessary abortion case and $278,127.42 (or $354,008.44 in 2014 dollars) in the *State v. Planned Parenthood of Alaska* Parental Consent Act case.[4] If one includes the State's own internal costs—which these figures do not—Alaska likely spent close to $1 million in its unsuccessful defenses of these unconstitutional acts.

Given this clear—and expensive—history, we draw the Committee's attention to the unusual lack of fiscal notes that account for these costs. As stewards of our State's finances, even absent the clear constitutional violations, this is reason enough for the Committee to reject these bills.

---

[1] *Planned Parenthood of the Great Northwest v. Streur*, Anchorage Super. Ct. No. 3AN-14-04711CI.

[2] 28 P.3d 904 (Alaska 2001).

[3] *State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

[4] We have used the US Bureau of Labor Statistics inflation calculator, available online at www.bls.gov/data/inflation_calculator.htm, to derive the inflation-adjusted 2014-dollar amounts. For the original raw dollar amounts, please see the attached orders from the Anchorage Superior Court and the Alaska Supreme Court.

2. SB 49 and HB 173 Cannot Narrow or Further Define the Current Constitutional Right to Medicaid-Funded Medically Necessary Abortions.

The ability of all women in Alaska to make their own medical decisions, including reproductive ones, is a fundamental right guaranteed by the Alaska Constitution.[5] "'Reproductive rights are fundamental . . . [and] include the right to an abortion.'"[6]

This fundamental right of reproductive choice is specifically protected by the "state constitutional guarantee of 'equal rights, opportunities, and protection under the law,'"[7] and Alaska may not "selectively exclude from [its Medicaid] program women who medically require abortions."[8] The requirement to fund medically necessary abortions "affects the exercise of a constitutional right"[9] and thus it may not be narrowed or otherwise altered through legislation.[10]

The contours of this right are clear, but even if, as SB 49's Sponsor Statement provides, "the term 'medically necessary abortion' has acquired a constitutional component of unknown scope," these bills may not delimit that right in any manner that narrows its original constitutional contours.[11] At best, these bills are a nullity that simply mirrors what the Supreme Court required in *State, Department of Health & Social Services.*

But, the bills' text and purpose belie this anodyne construction: they are narrower than the constitutional right announced by the Supreme Court and, putting aside that structural separation of powers infirmity, they are substantively unconstitutional.

---

[5] *State, Dept. of Health & Soc. Services*, 28 P.3d at 913.

[6] *Id.* at 907 (quoting *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997)) (omission and alteration in *id.*).

[7] *Id.* at 908 (quoting Alaska Const. art. I, § 1).

[8] *Id.* at 906.

[9] *Id.* at 909.

[10] *Valley Hosp. Ass'n Inc.*, 948 P.2d at 972 ("However, we cannot defer to the legislature when infringement of a constitutional right results from legislative action."); *Dickerson v. United States*, 530 U.S. 428, 437 (2000) ("But Congress may not legislatively supersede our decisions interpreting and applying the Constitution.").

[11] *Dickerson*, 530 U.S. at 437 (overturning legislation that tried to overrule the *Miranda v. Arizona*, 384 U.S. 436 (1966) decision, which "interpret[ed] and appl[ied] the Constitution."). Emphasis of the Sponsor Statement's quote omitted.

3. SB 49 and HB 173 Are Unconstitutional On Their Face

SB 49 and HB 173's definitions of "medically necessary abortion" are dramatically narrower than the Alaska Constitution's. First, the bills subject "medically necessary abortions" to an after-the-fact, second-guessing scrutiny, linking it to "a physician's objective and reasonable professional judgment after considering medically relevant factors[.]"

Second, and more worrisome, the bills exclusively limit "medically necessary abortion" to "avoid[ing] a threat of serious risk to the life or physical health" of the pregnant woman. Subpart (b)(4)'s lists do not save the bills, because though it attempts to tie the bills' narrower scope to the Supreme Court's examples of medically necessary abortions,[12] the narrow touchstone is still just "life or physical health," which impermissibly omits mental health from medical need. This squarely and unconstitutionally contradicts the Supreme Court, which recognized that mental health, such as "bipolar disorders," is a constitutionally protected and medically necessary basis for an abortion.[13] This omission makes SB 49 and HB 173 unconstitutional on their face.

4. SB 49 and HB 173's Genesis Violate Equal Protection

Apart from the similar new—and now challenged—regulation by the Department of Health and Social Services, SB 49 and HB 173 stand alone in the Alaska Medicaid scheme. "Medically necessary" is a common term, scattered throughout the Medicaid regulations. The State specifically lists "medically necessary" in the regulations for

- hospital stays,[14]
- eye care,[15]
- emergency air or ground ambulances,[16]
- mental health treatment,[17]
- community behavioral health services providers,[18]
- enteral and oral nutritional products,[19]

---

[12] *State, Dept. of Health & Soc. Services*, 28 P.3d at 907.

[13] *Id.*

[14] 7 Alaska Admin. Code § 140.325.

[15] 7 Alaska Admin. Code § 110.715(a)(1).

[16] 7 Alaska Admin. Code § 120.415(a).

[17] 7 Alaska Admin. Code § 110.445(a)(1).

[18] 7 Alaska Admin. Code § 135.230(a)(1).

[19] 7 Alaska Admin. Code § 120.240.

- B-complex vitamins,[20] and
- podiatry services[21]

and "medically necessary" is a blanket prerequisite for each and every Medicaid claim: "[t]he department will pay for a service only if that service . . . (5) is *medically necessary*[.]"[22]

Yet, despite its ubiquity, "medically necessary" is not defined in the Alaska Statutes or the Administrative Code. And, given that Alaska administers a functional Medicaid program, "medically necessary" is not vague, unwieldy, or cumbersomely overbroad.

The explicit purpose of SB 49 and HB 173, as announced in their Sponsor Statements, is to "provide[] a neutral definition for a 'medically necessary abortion,'" because, to quote SB 49's Sponsor Statement, there is insufficient "guidance as to how broadly the term 'medically necessary abortion' is to be construed."

In a constitutional challenge of SB 49 or HB 173, the courts will note that "medically necessary" permeates the Medicaid regulations and that its lack of an exhaustive SB 49 or HB 173-like definition has not caused the State to lack "guidance" on how it "is to be construed." Rather, courts will probably acknowledge that the bills' extensive definition is unique in Alaska law and will then likely conclude that they are "based on criteria unrelated to the purposes of the public health care program,"[23] namely, that it is "based solely on political disapproval of the medically necessary procedure."[24]

The bills are not rooted in "neutral criteria" that have a "fair and substantial relation to the object of the legislation."[25] Instead, because they are grounded in a political desire to reduce publicly funded abortions, they violate equal protection.[26]

---

[20] 7 Alaska Admin. Code § 120.110(e)(6)(H).

[21] 7 Alaska Admin. Code § 110.505(a).

[22] 7 Alaska Admin. Code § 105.100 (emphasis added).

[23] *State, Dept. of Health & Soc. Services*, 28 P.3d at 915.

[24] *Id.* at 905.

[25] *Id.* at 910–11.

[26] *See id.* at 912 n.59 (noting by example that a "bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government interest," and that a "purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest" satisfy equal protection) (internal quotation omitted and alteration in original).

5. Conclusion

We urge the Finance Committee to avoid passing a bill that is plainly unconstitutional and that will mire the State in an expensive—and entirely avoidable—constitutional challenge.

We appreciate the opportunity to share our concerns about Senate Bill 49 and House Bill 173. We hope that our comments were helpful in identifying the bills' constitutional infirmities, and, because they violate both the Equal Protection Clause and the separation of powers, the ACLU opposes the bills and urges a "Do Not Pass" vote.

Please contact us if you have any questions or if you want any additional information. We are always happy to respond through written or oral testimony, or to answer informally any questions that Members of the Committee may have.

Thank you again for considering our testimony.

Sincerely,

Joshua A. Decker
Interim Executive Director

cc: Representative Mia Costello, Rep.Mia.Costello@akleg.gov
Representative Bryce Edgmon, Rep.Bryce.Edgmon@akleg.gov
Representative Lindsey Holmes, Rep.Lindsey.Holmes@akleg.gov
Representative Cathy Engstrom Munoz, Rep.Cathy.Munoz@akleg.gov
Representative Steve Thompson, Rep.Steve.Thompson@akleg.gov
Representative Tammie Wilson, Rep.Tammie.Wilson@akleg.gov
Representative Les Gara, Rep.Les.Gara@akleg.gov
Representative David Guttenberg, Rep.David.Guttenberg@akleg.gov
Representative Mike Hawker, Rep.Mike.Hawker@akleg.gov
Representative Scott Kawasaki, Rep.Scott.Kawasaki@akleg.gov
Senator John Coghill, Sponsor, Sen.John.Coghill@akleg.gov
Representative Gabrielle LeDoux, Sponsor, Rep.Gabrielle.LeDoux@akleg.gov

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

APPELLATE COURTS
STATE OF ALASKA

MAR - 6 2001

CLERK

By _____ Deputy

PLANNED PARENTHOOD OF ALASKA, INC., et al.,

Plaintiffs,

v.

KAREN PERDUE, Commissioner, Department of Health and Social Services, et al.,

Defendants.

3-9109

FEB 21 2001

Case No. 3AN-98-07004

PROPOSED AMENDED JUDGMENT

The Plaintiffs having moved the Court and having been granted by the Court awards of attorneys' fees and costs in the sum of $109,928.41 on October 19, 1999, and in the sum of $58,082.35 on January 25, 2001, it is hereby ordered that the Final Judgment be amended to include the prior orders for attorneys' fees and costs totaling $168,010.76. Post-judgment interest at the statutory rate of 7.5 percent per year shall accrue on the October 19, 1999, award from that date until paid. Post-judgment interest at the statutory rate of 8 percent per year shall accrue on the January 25, 2001, award from that date until paid.

ENTERED this 14 day of March, 2001, at Anchorage, Alaska.

Sen K. Tan
Superior Court Judge

I certify that on 3-15-01 a copy of the above was mailed to each of the following at their addresses of record.

Schlerss
Kirsch (AAG)

E Winkler
Secretary/Deputy Clerk

SUDDOCK & SCHLEUSS, P.C.
ATTORNEYS AT LAW
500 L STREET, SUITE 500
ANCHORAGE, ALASKA
99501-3510
TEL: (907) 258-7807
FAX: (907) 276-1158

In the Supreme Court of the State of Alaska

State of Alaska, DHSS, et al.,	)	
	)	Supreme Court No. **S-09109**
Appellants,	)	
v.	)	**Order**
	)	Awarding Costs and Attorney's Fees
Planned Parenthood of Alaska, et al.,	)	
	)	
Appellees.	)	Date of Order: **9/20/01**
	)	

Trial Court Case # **3AN-98-07004CI**

On consideration of the cost bill, filed on 8/30/01, and no opposition having been filed by any party,

IT IS ORDERED:

1. Appellant shall pay appellee the following allowable costs:

Copies of appellee's brief	$572.60
Copies of supplemental brief	$ 48.30
Copies of appellee's excerpt	$244.50
Total	$865.40

2. The following costs are disallowed:

Copies of appellee's memorandum in opposition to motion for stay of injunction	$264.00
Appendix of cases in support of appellee's opposition to stay	$343.20

3. At the direction of an individual justice, attorney's fees in the amount of $67,150.00 are awarded to the appellee.

Clerk of the Appellate Courts

Marilyn May

Marilyn May

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PLANNED PARENTHOOD OF ALASKA, JAN WHITEFIELD, M.D., ROBERT KLEM, M.D., JANE DOES I-X,

Plaintiffs,

and

STATE OF ALASKA,

Defendant.

CONCERNED ALASKA PARENTS, INC.

Amicus Curie.

CASE NO. 3AN-97-6014 CI

ORDER AND DECISION

This matter is before the court on plaintiffs' Motion for Attorney Fees. Defendant does not oppose an award of reasonable attorney fees, but disputes the reasonableness of the fees sought. Plaintiffs seek $148,692.70 in fees.

ANALYSIS

A prevailing public interest litigant is normally entitled to full reasonable attorney's fees. Dansereau v. Ulmer, Slip Op. No. 4962 at p. 2 (Alaska April 3, 1998). Here, it is undisputed that the plaintiffs are prevailing public interest litigants. The amount and reasonableness of the fee award is to be determined on the facts of the case, and should be evaluated according to the twelve factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). Hickel v. Southeast Conference, 868 P.2d 919, 924 (Alaska 1994).

The defendant, without citing the Johnson factors, asserts several reasons why the requested fees are unreasonable. This opinion first addresses defendant's arguments and then addresses the Johnson factors.

A. DEFENDANT'S ARGUMENTS

Complexity

The State notes that this court must consider the complexity of the case in determining reasonable fees and asserts that this case was not complex. This court respectfully disagrees with defendant's characterization of the case.

This case was not like most other civil cases. First, the lawsuit raised a constitutional question of first impression for Alaska. Due to its nature, this case required substantial work to assimilate the arguments and evidence necessary to support the requests for injunctive relief and for summary judgment, and to oppose the two motions to dismiss.[1] Although the arguments and the facts supporting them may have been similar, each application for relief required a different analysis. Second, this case involved Concerned Alaska Parents ("CAP") as amicus curiae.[2] CAP presented numerous complex issues of its own to which plaintiffs had to respond. This court concludes that this was a complex case.

---

[1] Since this case was brought prior to the Alaska Supreme Court decision in Valley Hospital Association v. Mat-Su Coalition, 948 P.2d 963 (Alaska 1997), it was necessary that the plaintiffs draw substantially on federal law as well as analogous state law.

[2] Although CAP was not allowed to intervene as a party, CAP did much more than file a brief as amicus curiae.

Inadequate Support for Request

Defendants challenge that part of plaintiffs' fees request related to work done by attorneys Ms. Schleuss and Ms. Strout on the ground that plaintiffs failed to sufficiently support that part of the request. Since plaintiffs have now provided an affidavit by Ms. Schleuss in support of her fees, I find this argument is now moot as to her fees. As to Ms. Strout's total fees of $700, I find that Ms. Bamberger's affidavit satisfactorily supports this part of plaintiffs' request.

Unrelated Work

Defendants challenge some of the fees on the ground that they represent work unrelated to this action.

Defendants describe Ms. Bamberger's communications with counsel in 97-6019, the concurrent challenge to the partial birth abortion statute, as coordination by the attorneys of their cases which should be uncompensated in this matter. I find that proper representation in a lawsuit includes consulting with counsel in 97-6019, as well as obtaining a copy of the transcript of the TRO ruling in that matter. Further, I find that three telephone conversations to accomplish this purpose was reasonable.

CAP

Defendant argues that it should not be required to pay the fees associated with opposing motions or other arguments asserted by CAP. This argument also fails. First, I find that to rule as defendant requests would result in apportionment by issue, which is prohibited. Dansereau at 5. Further, this court concludes that

the State benefited from CAP's participation as one would benefit from having co-counsel. In this case, CAP was not a neutral "friend of the court." Rather, CAP's position was very much aligned with the State's in arguing that the statute was constitutional. CAP, in this case, supplemented the State's briefing and presented contentions and arguments strengthening the State's case. Accordingly, I find that the State is liable for fees incurred in responding to CAP's briefs.

Duplicative or Unnecessary Work

Defendant asserts that the plaintiffs' attorneys necessarily duplicated each others efforts or engaged in unnecessary work. In support of its argument, defendant relies heavily upon the number of hours each attorney worked on any given product, not on the specifics of what each attorney was doing. For instance, where three, or even four attorneys coordinated briefing or other efforts, defendant concludes that there was necessarily a waste of resources. I disagree.

First, I find that the more pertinent question is, what was the total number of hours spent litigating this case. Here, as defendant points out, plaintiffs' counsel spent a total of 954.28 hours in this lawsuit while defendant spent a total of 579.2 hours, or 375.08 hours less than plaintiff. However, the number of hours spent by the defendant did not include the hours spent by CAP. I suspect that if the hours spent by CAP were included, the total number of hours spent by the State and CAP would be close to what plaintiff's counsel expended in this case. In light of this

understatement, I find the difference in total hours not unreasonable.

Further, I find that the amount of time invested in the preparation of this case is reflected in the high quality of work presented to the court. Plaintiffs' counsels' arguments were extremely precise, well-written, and well-supported by facts and law. Plaintiffs' counsel presented very high qualityf briefing to the court.[3]

Next, after reviewing both parties' arguments, I reject defendant's objections to plaintiffs' use of out-of-state or other attorneys for depositions. For instance, I find that plaintiffs' counsel acted reasonably when they hired Fairbanks counsel to conduct the deposition of Ms. Scully, since the cost to plaintiffs was not significantly different than if their own counsel had conducted the deposition and because Ms. Bamberger, the "local" co-counsel, was thoroughly engaged with other "ninth-hour" depositions.

The State also objects to the cost of other counsel who defended a deposition in Vermont. Defendant suggests that plaintiffs' counsel should have appeared telephonically, as did defendant's counsel. Although defending a deposition telephonically may be a reasonable option, it is not the only

---

[3] In making this finding, this court does not say that defendant's counsel's briefing was not of the same caliber. Indeed, the quality of the briefing in this lawsuit by all involved was of the highest degree.

reasonable option. Having counsel present at a deposition to consult with the deponent cannot be deemed an unreasonable expense.

Plaintiff's counsel should have been able to work faster

Defendant asserts that, because of the extensive and collective litigation and civil rights experience of plaintiffs' attorneys, the attorneys should not have required over 900 hours to prepare their case. This court rejects this final argument on the premise that the case presented a case of first impression for the State. Therefore, experience in federal law or the law of other jurisdictions did not have a direct bearing on Alaska's state law.

In conclusion, this court is not persuaded by defendant's objections to the reasonableness of plaintiffs' fees.

B. THE JOHNSON FACTORS

Johnson, supra, directs courts to consider twelve factors when determining the reasonableness of fees. Below, several of these factors are analyzed as they bear directly on the issue of reasonable fees in this case. Other factors are not relevant and were not addressed by the parties, and hence, I reach no conclusions as to them.[4]

1. The time and labor required

As stated above, this court finds that there was substantial

---

[4] Those factors are: the preclusion of other employment opportunities for counsel; whether the fee is fixed or contingent; time limitations that prioritize this work so that other work is delayed; the "undesirability" of the case; and the nature and the length of the professional relationship between the attorney and client.

time and labor required to properly prepare this complex case.

2. The novelty and difficulty of the questions

As already stated, this case presented a question of first impression in Alaska, and did not enjoy the benefit of Alaska cases substantially analogous to the issue presented.

3. The skill requisite to perform the legal service properly

As to this factor, the court is instructed to observe the attorney's work product, preparation and general ability before the court. As already noted, this court found plaintiffs' counsels' work to be of the highest quality, reflective of the time invested in the work. Further, this court found counsels' oral presentations to be of the same quality.

4. The customary fee

I find the attorneys' hourly rates, which range from $110 to $180 to be reasonable and customary.

5. The amount involved and the results obtained

Johnson directs that, "[i]f the decision corrects across-the-board discrimination affecting a large class" of claimants or plaintiffs, the attorney's fee award should reflect the relief granted. Johnson at 718. Although no exact figures are ascertainable, I find that a necessarily significant number of women have, or will be affected by this lawsuit.

6. The experience, reputation and ability of the attorneys

I have already dismissed defendant's assertions that, because of the counsels' significant experience their costs should be lower. But, this factor relates more to the hourly rate charged

by the attorney. As already noted, I find the plaintiffs' attorneys' hourly rates reasonable here, particularly since it is recognized that experienced attorneys who specialize in civil rights cases may enjoy a higher rate of compensation than others. Johnson at 718.

7. Awards in similar cases

No argument was presented by the parties to the court related to this factor. However, this court notes that, in Valley Hospital, supra, a 1992 case, the court awarded approximately $110,000 in attorney's fees. The issue presented in that case was analogous to the one here. And, the award of injunctive relief and disposition by summary judgment in that case is also analogous. I find that, considering inflation, an award of $150,000 in 1998 approximates an award of $110,000 in 1992.

Conclusion

Application of the relevant Johnson factors leads to the conclusion that plaintiffs' attorneys' fees are reasonable. Indeed, none of the factors support a contrary conclusion.

CONCLUSION

After consideration of the parties' arguments and application of the factors set forth in Johnson, IT IS HEREBY ORDERED AND ADJUDGED THAT,

1. Plaintiffs are prevailing party, public interest litigants;

2. Plaintiffs' Motion for Attorney Fees is GRANTED; and

3. The State of Alaska shall pay plaintiffs the sum of $148,692.70 as full reasonable attorneys' fees and costs as approved by the Clerk of the Court, and an amended final judgment shall be entered in accordance herewith.[5]

Dated at Anchorage, Alaska this 2 day of October, 1998.

SEN K. TAN
Superior Court Judge

I certify that on 10-5-98 a copy of the above was mailed to each of the following at their addresses of record:
Bamberger
Dozier
Clarkson
Crepps
E Mueller
Secretary/Deputy Clerk

[5] This court notes that, at the time of entry of original judgment in this case, the question of attorney's fees had not been presented to the court.

In the Supreme Court of the State of Alaska

State of Alaska, Appellant/Cross-Appellee, v. **Planned Parenthood of Alaska & Jan Whitefield, M.D,** Appellees/Cross-Appellants.	Supreme Court No. **S-11365/S-11386** **Order** Awarding Costs Date of Order: **1/14/08**

Trial Court Case # **3AN-97-06014CI**

On consideration of the Appellee/Cross-Appellant's **11/13/07** cost bill, and the **12/6/07** non-opposition, **IT IS ORDERED:**

1. Appellant/Cross-Appellee shall pay Appellee/Cross-Appellant **$ 8,537.22** for the following costs:

Filing Fee	$	150.00
Transcript preparation	$	7,657.37
Postage	$	41.99
Copies and printing of brief	$	687.86
Total	**$**	**8,537.22**

Clerk of the Appellate Courts

Marilyn May

Marilyn May

In the Supreme Court of the State of Alaska

State of Alaska,	)	
	)	Supreme Court No. **S-11365/S-11386**
Appellant/Cross-Appellant,	)	
v.	)	**Order**
	)	
Planned Parenthood of Alaska & Jan Whitefield, M.D,	)	
	)	
Appellees/Cross-Appellants.	)	Date of Order: **1/25/08**
	)	

Trial Court Case # **3AN-97-06014CI**

On consideration of Planned Parenthood of Alaska & Jan Whitefield, M.D.'s 11/13/07 affidavit of services rendered on appeal; the State of Alaska's 12/6/07 non-opposition to the affidavit of services rendered on appeal; Planned Parenthood of Alaska & Jan Whitefield, M.D.'s 12/21/07 motion for leave to file supplemental affidavit of services rendered on appeal, covering attorney's fees expended in responding to the petition for rehearing; and no opposition to the supplemental affidavit having been received, IT IS HEREBY ORDERED that, no opposition to appellees/cross-appellants Planned Parenthood of Alaska and Jan Whitefield, M.D.'s attorney's fees request having been filed by appellant/cross-appellee State of Alaska:

Appellant/cross-appellee State of Alaska shall pay to the appellees/cross-appellants **$120,897.50** in attorney's fees.

Entered by direction of an individual justice.

Clerk of the Appellate Courts

Marilyn May

Marilyn May

George W. Brown, MD ***Community Pediatrician***
1640 Second Street Douglas, AK 99824 -5211 907 364 2726 gbrow177637@yahoo.com

HONORABLE MEMBERS OF HOUSE FINANCE COMMITTEE

I am a practicing pediatrician, I live in Douglas, and I am grateful as an Alaska citizen to have the privilege and responsibility to testify in opposition to SB 49 and HB 173

These bills have several flaws. While it addresses the most contentious issue of our Republic's political history since the abolition of slavery, it IMPOSES personal values which restrict access to legal medical services, DISRESPECTS personal choice of women, which means sexual discrimination, and of most importance DENIES the reality of mind and body connection in human health. Neuroscience continues to show how our brain influences physical health and illness. Physical illnesses such as cancer and trauma injuries like domestic violence, child maltreatment, concussions, and traumatic brain injuries impose continuing mental stress and make a huge influence on our brains. Social and behavioral disorders also have huge influence on our brains.

Unintended pregnancies can produce intense stress on brains. Not uncommonly, some intended pregnancies that conclude with healthy newborns result in post-partum depression, now well recognized in medical practice. Persons who are trying to cope with such physical and social stresses can cope with them. Successful coping can be enhanced with family, health, and social supports, which opens possibilities to other and future choices and healing.

Laws which deny personal choices about health care add more stress to individuals. Persons who have never been pregnant or who can never become pregnant cannot really understand these particular stresses. Persons who are or who have been pregnant are more experienced for seeking and finding the most appropriate choices to deal with these stresses.

There is a more positive option for all of us in this complex social dilemma. As we try hard to be tolerant about others values, understand the deep complexities of individual and social behavior, and to listen with the intent to hear all voices, we can come together to accept and increase practices which prevent as many as possible future unintended pregnancies. This is in no way simple, but it has been done for decades and does work when practiced. It also can redirect our energies away from conflict toward cooperation. There is certainly much more we can all do to improve male understanding about violence and pregnancy prevention and to increase their practice of respect and birth control. I hope you will vote against these bills and work toward preventive legislation action.

Thank you for listening. I welcome your questions and comments.

Respectfully,

George W. Brown, MD

Feb 25, 2014

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049SSam-DHSS-FS-4-12-13
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance

Department: Department of Health and Social Services
Appropriation: Public Assistance
Allocation: Public Assistance Field Services
OMB Component Number: 236

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Personal Services	528.6		704.8	704.8	704.8	704.8	704.8
Travel	2.0		2.0	2.0	2.0	2.0	2.0
Services	103.2		137.7	137.7	137.7	137.7	137.7
Commodities	11.4		15.2	15.2	15.2	15.2	15.2
Capital Outlay	225.0						
Grants & Benefits							
Miscellaneous							
Total Operating	**870.2**	**0.0**	**859.7**	**859.7**	**859.7**	**859.7**	**859.7**
Fund Source (Operating Only)							
1002 Fed Rcpts	435.1		429.9	429.9	429.9	429.9	429.9
1003 G/F Match	435.1		429.8	429.8	429.8	429.8	429.8
Total	**870.2**	**0.0**	**859.7**	**859.7**	**859.7**	**859.7**	**859.7**
Positions							
Full-time	9.0		9.0	9.0	9.0	9.0	9.0
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/14

Why this fiscal note differs from previous version:

Initial version for this appropriation and allocation.

Prepared By: Ron Kreher — Phone: (907)465-5847
Division: Public Assistance — Date: 04/12/2013 08:00 AM
Approved By: Sarah Woods, Deputy Director — Date: 04/12/13
Finance & Management Services

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SSSB049AM

Analysis

This legislation directs the department to submit a Medicaid State Plan Amendment to create a women's health program. A women's health program would include family planning-related services, including testing and treatment of sexually-transmitted diseases, contraceptive methods, and an annual family planning visit at an office/clinic. We assume that we would make these services available to individuals with incomes below 175% of the federal poverty level for Alaska. According to the current population estimates from the U.S. Census Bureau, approximately 14,000 women ages 19-44 are estimated to be uninsured and below this income level. Excluded in this fiscal note are women currently eligible for family planning services under Medicaid/Denali KidCare.

Assumptions:
Legislation will be effective Janury 1, 2014
85% of the 14,000 eligible population, or 12,000, would eventually utilize this service. In Year 1, an anticipated 6,000 women would enroll. This represents slightly less than half of the eligible population (uninsured, ages 19-44). It is expected that the number enrolled would increase by 10% per year (6,600 women in FY 15) to approximately 12,000 women as the program ramps up, although not within the time span of this fiscal note.
Eligibility factors and business processes for the new category of service will largely mirror general criteria for Medicaid. Individuals would re-certify for assistance every 6 months.
Eligibility technicians will conduct intake interviews, determine eligibility, authorize benefits, and issue notices for applicants.

6 Eligibility Technican II (R14), will be required to conduct intake and case maintenance activities.
1 Eligibility Technician III (R16) will be required to provide program and policy support and conduct case reviews to ensure quality control.
1 Eligibility Technician IV (R17) will be required to supervise and manage line staff.
1 Office Assistant II (R10) will be required to provide administrative support for the unit.
Staff will be recruited and hired 3 months prior to the legislation's effective date to ensure staff are fully trained and logistical needs are in place prior to implementation.

Calculations:

FY2014 Administrative Costs (9 months)		$870.2
Personal Services		$528.6
6 Eligibility Technician II R14	6x$77.2/12x9=	$347.4
1 Eligibility Technician III R16	1x$86.4/12x9=	$64.8
1 Eligibility Technician IV R17	1x$91.5/12x9=	$68.6
1 Office Assistant II R10	1x$63.7/12x9=	$47.8
Travel (For training avg $250.00 per 8 FTE per year)		$2.0
Services (IT, telecom, space, phones, utilities)		$103.2
Supplies and commodities		$11.4
Equipment (one time costs for workstations, furniture, computer, etc. $25.0x9)		$225.0

STATE OF ALASKA **BILL NO.** SSSB049AM
2013 LEGISLATIVE SESSION

Analysis Continued

Calculations:		
FY2015 Administrative Costs (12 months)		$859.7
Personal Services		$704.8
6 Eligibility Technician II R14	6x$77.2 =	$463.2
1 Eligibility Technician III R16	1x$86.4=	$86.4
1 Eligibility Technician IV R17	1x$91.5=	$91.5
1 Office Assistant II R10	1x$63.7=	$63.7
Travel (For training avg $250.00 per 8 FTE per year)		$2.0
Services (IT, telecom, space, phones, utilities)		$137.7
Supplies and commodities		$15.2

Regulations:
Regulation changes will be necessary to specify the eligibility requirements and covered services included in this Medicaid option. No additional funding is required to change the regulations as the Department frequently updates its Medicaid regulations.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049SS(am)-DHSS-HCMS-4-11-13
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance

Department: Department of Health and Social Services
Appropriation: Medicaid Services
Allocation: Health Care Medicaid Services
OMB Component Number: 2077

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits	2,400.0		5,808.0	7,027.7	8,505.1	10,296.0	12,456.9
Miscellaneous							
Total Operating	**2,400.0**	**0.0**	**5,808.0**	**7,027.7**	**8,505.1**	**10,296.0**	**12,456.9**
Fund Source (Operating Only)							
1002 Fed Rcpts	2,160.0		5,227.2	6,324.9	7,654.6	9,266.4	11,211.2
1003 G/F Match	240.0		580.8	702.8	850.5	1,029.6	1,245.7
Total	**2,400.0**	**0.0**	**5,808.0**	**7,027.7**	**8,505.1**	**10,296.0**	**12,456.9**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/14

Why this fiscal note differs from previous version:

The previous fiscal note was indeterminate, as the Department does not have the data necessary to estimate the impact of the proposed definition of medical necessity on Medicaid spending. This fiscal note only includes the program cost of the Senate Floor amendment #1. The overall impacts of the bill on abortion and Medicaid pregnancy spending are still indeterminate.

Prepared By: Margaret Brodie, Director — Phone: (907)334-2520
Division: Health Care Services — Date: 04/11/2013 12:00 PM
Approved By: Sarah Woods, Deputy Director — Date: 04/11/13
Finance & Management Services

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SSSB049AM

Analysis

Section one of the bill directs the department to submit a Medicaid State Plan Amendment to create a women's health program. A women's health program would include family planning-related services (i.e., testing and treatment of sexually-transmitted diseases, contraceptive methods, and an annual family planning visit at an office/clinic). The Department assumes that services would be made available to individuals with incomes below 175% of the federal poverty level for Alaska. According to the current population estimates from the U.S. Census Bureau, approximately 14,000 women in Alaska ages 19-44 are estimated to be uninsured and below this income level. Excluded in this fiscal note are women currently eligible for family planning services under Medicaid/Denali KidCare.

Assumptions:
An annual cost of $800 per client in FY 14 for services, increasing 10% per year, based on experience with other family planning services and increased utilization and average medical cost index increases. This note assumes only 1/2 year's expenditures in FY 14, due to the need to adopt regulations prior to start-up.

85% of the 14,000 eligible population, or almost 12,000, would eventually utilize this service. In Year 1, it is anticipated that 6,000 women would initially enroll. This represents slightly less than half of the eligible population (uninsured, ages 19-44).

It is expected that the number enrolled would increase by 10% per year (6,600 women in FY 15) to approximately 12,000 women as the program ramps up, although not within the time span of this fiscal note.

90% of the cost of family planning services under Medicaid is paid by the federal government for this state plan option.

Administrative costs are shown in separate fiscal notes.

Regulations will be necessary to specify the eligibility requirements and covered services included in this Medicaid option.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SB 49
Fiscal Note Number:
() Publish Date:

Identifier: SB049SSam-DHSS-MAA-4-11-13
Title: MEDICAID PAYMENT FOR ABORTIONS; TERMS
Sponsor: COGHILL
Requester: House Finance Committee

Department: Department of Health and Social Services
Appropriation: Health Care Services
Allocation: Medical Assistance Administration
OMB Component Number: 242

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2014**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Personal Services							
Travel							
Services	50.2						
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**50.2**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
1002 Fed Rcpts	37.7						
1003 G/F Match	12.5						
Total	**50.2**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended or repealed? 01/01/14

Why this fiscal note differs from previous version:

Initial version for this component. Amended bill adds a women's health program to Medicaid, requiring a one-time administrative expense to implement.

Prepared By:	Margaret Brodie, Director	Phone:	(907)334-2520
Division	Health Care Services	Date:	04/11/2013 06:00 PM
Approved By:	Sarah Woods, Deputy Director	Date:	04/11/13
	Finance & Management Services		

FISCAL NOTE ANALYSIS

STATE OF ALASKA **BILL NO.** SSSB049AM
2013 LEGISLATIVE SESSION

Analysis

This legislation directs the department to submit a Medicaid State Plan Amendment to create a women's health program. A women's health program would include family planning-related services, including testing and treatment of sexually-transmitted diseases, contraceptive methods, and an annual family planning visit at an office/clinic. We assume that we would make these services available to individuals with incomes below 175% of the federal poverty level for Alaska.

In order to add this program to Medicaid, it is necessary to make changes to the Medicaid claims processing system to recognize recipients of the new program and pay claims appropriately. The Department estimates that there will be a one-time cost of $50.2, 75% of which will be reimbursed by the federal government.

Regulation changes will be necessary to specify the eligibility requirements and covered services included in this Medicaid option. No additional funding is required to change the regulations as the Department frequently updates its Medicaid regulations.

Table 18: Number of Induced Terminations by Method of Payment and Age: Alaska Occurrence, 2013

Payment Type	Total	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated
Cash	538	2	17	55	174	147	80	43	18	2	0
Insurance	75	1	6	4	21	18	17	5	3	0	0
Medicaid	547	5	28	44	179	149	74	34	8	1	25
Multiple Payment Sources	42	0	4	1	14	14	5	3	1	0	0
Other/Not Stated	248	1	13	17	76	56	39	20	8	1	17
Total	1,450	9	68	121	464	384	215	105	38	4	42

Table 19: Induced Terminations by Method of Payment and Percentage by Age: Alaska Occurrence, 2013

Payment Type	Total	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated
Cash	37.1	22.2	25.0	45.5	37.5	38.3	37.2	41.0	47.4	50.0	0.0
Insurance	5.2	11.1	8.8	3.3	4.5	4.7	7.9	4.8	7.9	0.0	0.0
Medicaid	37.7	55.6	41.2	36.4	38.6	38.8	34.4	32.4	21.1	25.0	59.5
Multiple Payment Sources	2.9	0.0	5.9	0.8	3.0	3.6	2.3	2.9	2.6	0.0	0.0
Other/Not Stated	17.1	11.1	19.1	14.0	16.4	14.6	18.1	19.0	21.1	25.0	40.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Table 20: Induced Terminations by Age and Percentage by Method of Payment: Alaska Occurrence, 2013

Payment Type	Total	<15	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45+	Not Stated
Cash	100.0	0.4	3.2	10.2	32.3	27.3	14.9	8.0	3.3	0.4	0.0
Insurance	100.0	1.3	8.0	5.3	28.0	24.0	22.7	6.7	4.0	0.0	0.0
Medicaid	100.0	0.9	5.1	8.0	32.7	27.2	13.5	6.2	1.5	0.2	4.6
Multiple Payment Sources	100.0	0.0	9.5	2.4	33.3	33.3	11.9	7.1	2.4	0.0	0.0
Other/Not Stated	100.0	0.4	5.2	6.9	30.6	22.6	15.7	8.1	3.2	0.4	6.9
Total	100.0	0.6	4.7	8.3	32.0	26.5	14.8	7.2	2.6	0.3	2.9

2013 HOUSE FINANCE COMMITTEE VOTE SHEET

VOID

DATE: 4/13/13

Motion to Adopt

Amendment: Workdraft 28-LS0410\V

MEMBER	Favor	Oppose
REP. THOMPSON	✓	
REP. WILSON	✓	
REP. COSTELLO		✓
REP. EDGMON		
REP. GARA		
REP. GUTTENBERG		✓
REP. HOLMES		✓
REP. MUNOZ		
REP. NEUMAN		
REP. STOLTZE		
REP. AUSTERMAN		

YEA _____

NAY _____

AMERICAN CIVIL LIBERTIES UNION of ALASKA

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
1057 W. Fireweed, Suite 207
Anchorage, AK 99503
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

April 11, 2013

The Honorable Alan Austerman, Co-Chair
The Honorable Bill Stoltze, Co-Chair
The Honorable Mark Neuman, Vice-Chair
House Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801
via email: Rep.Alan.Austerman@akleg.gov
Rep.Bill.Stoltze@akleg.gov
Rep.Mark.Neuman@akleg.gov

Re: SB 49: Reproductive Health Funding
ACLU Review of Financial and Constitutional Issues

Dear Co-Chairs Austerman and Stoltze, and Vice-Chair Neuman:

Thank you for the opportunity to provide written testimony about the Sponsor Substitute for Senate Bill 49, as amended (hereafter "SB 49"), which impermissibly seeks to strip funding for needed medical services in an important area of women's health.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. We engage in public advocacy and education to further those rights, and – when necessary – would litigate when those rights are attacked. In that context, we write to advise you that this Bill is unconstitutional or, at best, an academic nullity, and – of specific import to this Committee – if enacted, the State would likely incur and be ordered to pay hundreds of thousands of dollars in attorney's fees and costs arising out of the inevitable constitutional challenge.

The Record of Costs Related to Repeated Litigation

As more fully set forth below, SB 49 is – quite plainly – unconstitutional. Its passage would, of necessity, entail the State in lengthy and complex litigation.

As Members of this Committee are aware, this would not be the first time, nor even the second, that these issues have been litigated.

The State of Alaska has been sued multiple times over its repeated attempts to limit a woman's constitutional right to reproductive autonomy. In addition to the Medicaid medically-necessary abortion case of *State, Department of Health & Social Services v. Planned Parenthood of Alaska, Inc.*,[1] the now-unconstitutional Parental Consent Act spawned a lawsuit, and multiple appeals, that lasted over ten years.[2]

Not counting the State's own internal costs, such as paying its own attorneys, the State paid the successful plaintiffs $514,153.58 (or $725,235.98 in 2013 dollars) for these two unconstitutional actions: $236,026.16 (or $373,875.99 in 2013 dollars) in the *State, Department of Health & Social Services* Medicaid medically-necessary abortion case and $278,127.42 (or $351,359.99 in 2013 dollars) in the *State v. Planned Parenthood of Alaska* Parental Consent Act case.[3]

Given this clear history, we draw the Committee's attention to the unusual lack of a fiscal note that accounts for these costs. As stewards of our State's finances, even absent the clear constitutional violations, this is reason enough to reject this legislation.

SB 49 Cannot Narrow or Further Define the Current Constitutional Right to Medicaid-Funded Medically Necessary Abortions

The ability of all women in Alaska to make their own medical decisions, including reproductive ones, is a fundamental right guaranteed by the Alaska Constitution.[4] "'Reproductive rights are fundamental . . . [and] include the right to an abortion.'"[5]

---

[1] 28 P.3d 904 (Alaska 2001).

[2] *State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

[3] We have used the US Bureau of Labor Statistics inflation calculator, available online at http://www.bls.gov/data/inflation_calculator.htm, to derive the inflation-adjusted 2013 dollar amounts. **For the original raw dollar amounts, please see the attached orders from the Anchorage Superior Court and the Alaska Supreme Court.**

[4] *State, Dept. of Health & Soc. Services*, 28 P.3d at 913.

This fundamental right of reproductive choice is specifically protected by the "state constitutional guarantee of 'equal rights, opportunities, and protection under the law,'"[6] and Alaska may not "selectively exclude from [its Medicaid] program women who medically require abortions."[7] The requirement to publicly fund medically necessary abortions "affects the exercise of a constitutional right"[8] and thus it may not be narrowed or otherwise altered through legislation.[9]

The contours of this right are clear, but even if, as the Sponsor Statement provides, "the term 'medically necessary abortion' has acquired a constitutional component of unknown scope," this Bill may not delimit that right in any manner that narrows its original constitutional contours.[10] At best, this Bill is a nullity that simply mirrors what the Supreme Court required in *State, Department of Health & Social Services*.

But, the Bill's text and purpose belie this anodyne construction: it is narrower than the constitutional right announced by the Supreme Court and, aside from its separation of powers infirmity, it is substantively unconstitutional.

SB 49 Is Unconstitutional On Its Face

SB 49's definition of "medically necessary abortion" is dramatically narrower than the Alaska Constitution's. First, the Bill subjects "medically necessary abortions" to an after-the-fact, second-guessing scrutiny, linking it to "a physician's objective and reasonable professional judgment after considering medically relevant factors[.]"

Second, and more worrisome, the Bill exclusively limits "medically necessary abortion" to "avoid[ing] a threat of serious risk to the life or physical health" of the pregnant woman. Subpart (b)(4)'s list does not save the Bill, because though it attempts to tie the Bill's narrower scope to

---

[5] *Id.* at 907 (quoting *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997)) (omission and alteration in *id.*).

[6] *Id.* at 908 (quoting Alaska Const. art. I, § 1).

[7] *Id.* at 906.

[8] *Id.* at 909.

[9] *Valley Hosp. Ass'n Inc.*, 948 P.2d at 972 ("However, we cannot defer to the legislature when infringement of a constitutional right results from legislative action."); *Dickerson v. United States*, 530 U.S. 428, 437 (2000) ("But Congress may not legislatively supersede our decisions interpreting and applying the Constitution.").

[10] *Dickerson*, 530 U.S. at 437 (overturning legislation that sought to overrule the *Miranda v. Arizona*, 384 U.S. 436 (1966) decision, which "interpret[ed] and appl[ied] the Constitution."). Emphasis of the Sponsor Statement's quote omitted.

the Supreme Court's examples of medically necessary abortions,[11] SB 49's touchstone is still just "life or physical health," which impermissibly omits mental health from medical need. **This squarely and unconstitutionally contradicts the Supreme Court, which recognized that mental health, such as "bipolar disorders," is a constitutionally protected and medically necessary basis for an abortion.**[12] This omission makes SB 49 unconstitutional on its face.

SB 49's Impetus Violates Equal Protection

SB 49 stands alone in the Alaska Medicaid scheme. "Medically necessary" is a common term, scattered throughout the Medicaid regulations. The State specifically lists "medically necessary" in the regulations for

- hospital stays,[13]
- eye care,[14]
- emergency air or ground ambulances,[15]
- mental health treatment,[16]
- community behavioral health services providers,[17]
- enteral and oral nutritional products,[18]
- B-complex vitamins,[19] and
- podiatry services[20]

and "medically necessary" is a blanket prerequisite for each and every Medicaid claim: "[t]he department will pay for a service only if that service . . . (5) is *medically necessary*[.]"[21]

---

[11] *State, Dept. of Health & Soc. Services*, 28 P.3d at 907.

[12] *Id.*

[13] 7 Alaska Admin. Code § 140.325.

[14] 7 Alaska Admin. Code § 110.715(a)(1).

[15] 7 Alaska Admin. Code § 120.415(a).

[16] 7 Alaska Admin. Code § 110.445(a)(1).

[17] 7 Alaska Admin. Code § 135.230(a)(1).

[18] 7 Alaska Admin. Code § 120.240.

[19] 7 Alaska Admin. Code § 120.110(e)(6)(H).

[20] 7 Alaska Admin. Code § 110.505(a).

[21] 7 Alaska Admin. Code § 105.100 (emphasis added).

Yet, despite its ubiquity, "medically necessary" is not defined in the Alaska Statutes or the Administrative Code. And, given that Alaska administers a functional Medicaid program, "medically necessary" is not vague, unwieldy, or cumbersomely overbroad.

The explicit purpose of SB 49, as announced in the Sponsor Statement, is to "provide[] a neutral definition for a 'medically necessary abortion,'" because there is insufficient "guidance as to how broadly the term 'medically necessary abortion' is to be construed."

In a constitutional challenge of SB 49, the courts will note that "medically necessary" permeates the Medicaid regulations and that its lack of an exhaustive SB 49-like definition has not caused the State to lack "guidance" on how it "is to be construed." Rather, courts will probably acknowledge that SB 49's extensive definition is unique in Alaska law and will then likely conclude that this Bill is "based on criteria unrelated to the purposes of the public health care program,"[22] namely, that it is "based solely on political disapproval of the medically necessary procedure."[23]

This Bill is not rooted in "neutral criteria" that have a "fair and substantial relation to the object of the legislation."[24] Instead, it is grounded in a political desire to reduce publicly funded abortions, and thus violates equal protection.[25]

Conclusion

We urge the Finance Committee to avoid passing a bill that is plainly unconstitutional and that will mire the State in an expensive – and entirely avoidable – constitutional challenge.

We appreciate the opportunity to share our concerns about Senate Bill 49. We hope that our comments were helpful in identifying the Bill's constitutional infirmities. Because it violates the Equal Protection Clause and the separation of powers, the ACLU opposes this Bill and urges a "Do Not Pass" vote.

/ / /

---

[22] *State, Dept. of Health & Soc. Services*, 28 P.3d at 915.

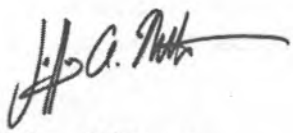
[23] *Id.* at 905.

[24] *Id.* at 910–11.

[25] *See id.* at 912 n.59 (noting by example that a "bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government interest," and that a "purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest" satisfy equal protection) (internal quotation omitted and alteration in original).

Please feel free to contact the undersigned should you have any questions or seek additional information.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

Attachments

cc: Representative Mia Costello, Rep.Mia.Costello@akleg.gov
Representative Bryce Edgmon, Rep.Bryce.Edgmon@akleg.gov
Representative Lindsey Holmes, Rep.Lindsey.Holmes@akleg.gov
Representative Cathy Engstrom Munoz, Rep.Cathy.Munoz@akleg.gov
Representative Steve Thompson, Rep.Steve.Thompson@akleg.gov
Representative Tammie Wilson, Rep.Tammie.Wilson@akleg.gov
Representative Les Gara, Rep.Les.Gara@akleg.gov
Representative David Guttenberg, Rep.David.Guttenberg@akleg.gov
Representative Mike Hawker, Rep.Mike.Hawker@akleg.gov
Representative Scott Kawasaki, Rep.Scott.Kawasaki@akleg.gov
Senator John Coghill, Sponsor, Sen.John.Coghill@akleg.gov

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

APPELLATE COURTS
STATE OF ALASKA

MAR - 6 2001

CLERK

By _____ Deputy

PLANNED PARENTHOOD OF ALASKA, INC., et al.,

Plaintiffs,

v.

KAREN PERDUE, Commissioner, Department of Health and Social Services, et al.,

Defendants.

3-9109

FEB 21 2001

Case No. 3AN-98-07004

PROPOSED AMENDED JUDGMENT

The Plaintiffs having moved the Court and having been granted by the Court awards of attorneys' fees and costs in the sum of $109,928.41 on October 19, 1999, and in the sum of $58,082.35 on January 25, 2001, it is hereby ordered that the Final Judgment be amended to include the prior orders for attorneys' fees and costs totaling $168,010.76. Post-judgment interest at the statutory rate of 7.5 percent per year shall accrue on the October 19, 1999, award from that date until paid. Post-judgment interest at the statutory rate of 8 percent per year shall accrue on the January 25, 2001, award from that date until paid.

ENTERED this 14 day of March, 2001, at Anchorage, Alaska.

Sen K. Tan
Superior Court Judge

I certify that on 3-15-01 a copy of the above was mailed to each of the following at their addresses of record.

Schleuss
Kirsch (AAG)

E Mueller
Secretary/Deputy Clerk

SUDDOCK&SCHLEUSS,P.C.
ATTORNEYS AT LAW
800 L STREET, SUITE 300
ANCHORAGE, ALASKA
99501-5910
TEL: (907) 258-7807
FAX: (907) 276-1158

In the Supreme Court of the State of Alaska

State of Alaska, DHSS, et al.,	)	
	)	Supreme Court No. **S-09109**
Appellants,	)	
v.	)	**Order**
	)	Awarding Costs and Attorney's Fees
Planned Parenthood of Alaska, et al.,	)	
	)	
Appellees.	)	Date of Order: **9/20/01**
	)	

Trial Court Case # **3AN-98-07004CI**

On consideration of the cost bill, filed on 8/30/01, and no opposition having been filed by any party,

IT IS ORDERED:

1. Appellant shall pay appellee the following allowable costs:

Copies of appellee's brief	$572.60
Copies of supplemental brief	$ 48.30
Copies of appellee's excerpt	$244.50
Total	$865.40

2. The following costs are disallowed:

Copies of appellee's memorandum in opposition to motion for stay of injunction	$264.00
Appendix of cases in support of appellee's opposition to stay	$343.20

3. At the direction of an individual justice, attorney's fees in the amount of $67,150.00 are awarded to the appellee.

Clerk of the Appellate Courts

Marilyn May

Marilyn May

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PLANNED PARENTHOOD OF ALASKA, JAN WHITEFIELD, M.D., ROBERT KLEM, M.D., JANE DOES I-X,

Plaintiffs,

and

STATE OF ALASKA,

Defendant.

CONCERNED ALASKA PARENTS, INC.

Amicus Curie.

CASE NO. 3AN-97-6014 CI

ORDER AND DECISION

This matter is before the court on plaintiffs' Motion for Attorney Fees. Defendant does not oppose an award of reasonable attorney fees, but disputes the reasonableness of the fees sought. Plaintiffs seek $148,692.70 in fees.

ANALYSIS

A prevailing public interest litigant is normally entitled to full reasonable attorney's fees. Dansereau v. Ulmer, Slip Op. No. 4962 at p. 2 (Alaska April 3, 1998). Here, it is undisputed that the plaintiffs are prevailing public interest litigants. The amount and reasonableness of the fee award is to be determined on the facts of the case, and should be evaluated according to the twelve factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). Hickel v. Southeast Conference, 868 P.2d 919, 924 (Alaska 1994).

The defendant, without citing the Johnson factors, asserts several reasons why the requested fees are unreasonable. This opinion first addresses defendant's arguments and then addresses the Johnson factors.

A. DEFENDANT'S ARGUMENTS

Complexity

The State notes that this court must consider the complexity of the case in determining reasonable fees and asserts that this case was not complex. This court respectfully disagrees with defendant's characterization of the case.

This case was not like most other civil cases. First, the lawsuit raised a constitutional question of first impression for Alaska. Due to its nature, this case required substantial work to assimilate the arguments and evidence necessary to support the requests for injunctive relief and for summary judgment, and to oppose the two motions to dismiss.[1] Although the arguments and the facts supporting them may have been similar, each application for relief required a different analysis. Second, this case involved Concerned Alaska Parents ("CAP") as amicus curiae.[2] CAP presented numerous complex issues of its own to which plaintiffs had to respond. This court concludes that this was a complex case.

---

[1] Since this case was brought prior to the Alaska Supreme Court decision in Valley Hospital Association v. Mat-Su Coalition, 948 P.2d 963 (Alaska 1997), it was necessary that the plaintiffs draw substantially on federal law as well as analogous state law.

[2] Although CAP was not allowed to intervene as a party, CAP did much more than file a brief as amicus curiae.

Inadequate Support for Request

Defendants challenge that part of plaintiffs' fees request related to work done by attorneys Ms. Schleuss and Ms. Strout on the ground that plaintiffs failed to sufficiently support that part of the request. Since plaintiffs have now provided an affidavit by Ms. Schleuss in support of her fees, I find this argument is now moot as to her fees. As to Ms. Strout's total fees of $700, I find that Ms. Bamberger's affidavit satisfactorily supports this part of plaintiffs' request.

Unrelated Work

Defendants challenge some of the fees on the ground that they represent work unrelated to this action.

Defendants describe Ms. Bamberger's communications with counsel in 97-6019, the concurrent challenge to the partial birth abortion statute, as coordination by the attorneys of their cases which should be uncompensated in this matter. I find that proper representation in a lawsuit includes consulting with counsel in 97-6019, as well as obtaining a copy of the transcript of the TRO ruling in that matter. Further, I find that three telephone conversations to accomplish this purpose was reasonable.

CAP

Defendant argues that it should not be required to pay the fees associated with opposing motions or other arguments asserted by CAP. This argument also fails. First, I find that to rule as defendant requests would result in apportionment by issue, which is prohibited. Dansereau at 5. Further, this court concludes that

the State benefited from CAP's participation as one would benefit from having co-counsel. In this case, CAP was not a neutral "friend of the court." Rather, CAP's position was very much aligned with the State's in arguing that the statute was constitutional. CAP, in this case, supplemented the State's briefing and presented contentions and arguments strengthening the State's case. Accordingly, I find that the State is liable for fees incurred in responding to CAP's briefs.

Duplicative or Unnecessary Work

Defendant asserts that the plaintiffs' attorneys necessarily duplicated each others efforts or engaged in unnecessary work. In support of its argument, defendant relies heavily upon the number of hours each attorney worked on any given product, not on the specifics of what each attorney was doing. For instance, where three, or even four attorneys coordinated briefing or other efforts, defendant concludes that there was necessarily a waste of resources. I disagree.

First, I find that the more pertinent question is, what was the total number of hours spent litigating this case. Here, as defendant points out, plaintiffs' counsel spent a total of 954.28 hours in this lawsuit while defendant spent a total of 579.2 hours, or 375.08 hours less than plaintiff. However, the number of hours spent by the defendant did not include the hours spent by CAP. I suspect that if the hours spent by CAP were included, the total number of hours spent by the State and CAP would be close to what plaintiff's counsel expended in this case. In light of this

understatement, I find the difference in total hours not unreasonable.

Further, I find that the amount of time invested in the preparation of this case is reflected in the high quality of work presented to the court. Plaintiffs' counsels' arguments were extremely precise, well-written, and well-supported by facts and law. Plaintiffs' counsel presented very high qualityf briefing to the court.[3]

Next, after reviewing both parties' arguments, I reject defendant's objections to plaintiffs' use of out-of-state or other attorneys for depositions. For instance, I find that plaintiffs' counsel acted reasonably when they hired Fairbanks counsel to conduct the deposition of Ms. Scully, since the cost to plaintiffs was not significantly different than if their own counsel had conducted the deposition and because Ms. Bamberger, the "local" co-counsel, was thoroughly engaged with other "ninth-hour" depositions.

The State also objects to the cost of other counsel who defended a deposition in Vermont. Defendant suggests that plaintiffs' counsel should have appeared telephonically, as did defendant's counsel. Although defending a deposition telephonically may be a reasonable option, it is not the only

---

[3] In making this finding, this court does not say that defendant's counsel's briefing was not of the same caliber. Indeed, the quality of the briefing in this lawsuit by all involved was of the highest degree.

reasonable option. Having counsel present at a deposition to consult with the deponent cannot be deemed an unreasonable expense.

Plaintiff's counsel should have been able to work faster

Defendant asserts that, because of the extensive and collective litigation and civil rights experience of plaintiffs' attorneys, the attorneys should not have required over 900 hours to prepare their case. This court rejects this final argument on the premise that the case presented a case of first impression for the State. Therefore, experience in federal law or the law of other jurisdictions did not have a direct bearing on Alaska's state law.

In conclusion, this court is not persuaded by defendant's objections to the reasonableness of plaintiffs' fees.

B. THE JOHNSON FACTORS

Johnson, supra, directs courts to consider twelve factors when determining the reasonableness of fees. Below, several of these factors are analyzed as they bear directly on the issue of reasonable fees in this case. Other factors are not relevant and were not addressed by the parties, and hence, I reach no conclusions as to them.[4]

1. The time and labor required

As stated above, this court finds that there was substantial

---

[4] Those factors are: the preclusion of other employment opportunities for counsel; whether the fee is fixed or contingent; time limitations that prioritize this work so that other work is delayed; the "undesirability" of the case; and the nature and the length of the professional relationship between the attorney and client.

time and labor required to properly prepare this complex case.

2. The novelty and difficulty of the questions

As already stated, this case presented a question of first impression in Alaska, and did not enjoy the benefit of Alaska cases substantially analogous to the issue presented.

3. The skill requisite to perform the legal service properly

As to this factor, the court is instructed to observe the attorney's work product, preparation and general ability before the court. As already noted, this court found plaintiffs' counsels' work to be of the highest quality, reflective of the time invested in the work. Further, this court found counsels' oral presentations to be of the same quality.

4. The customary fee

I find the attorneys' hourly rates, which range from $110 to $180 to be reasonable and customary.

5. The amount involved and the results obtained

Johnson directs that, "[i]f the decision corrects across-the-board discrimination affecting a large class" of claimants or plaintiffs, the attorney's fee award should reflect the relief granted. Johnson at 718. Although no exact figures are ascertainable, I find that a necessarily significant number of women have, or will be affected by this lawsuit.

6. The experience, reputation and ability of the attorneys

I have already dismissed defendant's assertions that, because of the counsels' significant experience their costs should be lower. But, this factor relates more to the hourly rate charged

by the attorney. As already noted, I find the plaintiffs' attorneys' hourly rates reasonable here, particularly since it is recognized that experienced attorneys who specialize in civil rights cases may enjoy a higher rate of compensation than others. Johnson at 718.

7. Awards in similar cases

No argument was presented by the parties to the court related to this factor. However, this court notes that, in Valley Hospital, supra, a 1992 case, the court awarded approximately $110,000 in attorney's fees. The issue presented in that case was analogous to the one here. And, the award of injunctive relief and disposition by summary judgment in that case is also analogous. I find that, considering inflation, an award of $150,000 in 1998 approximates an award of $110,000 in 1992.

Conclusion

Application of the relevant Johnson factors leads to the conclusion that plaintiffs' attorneys' fees are reasonable. Indeed, none of the factors support a contrary conclusion.

CONCLUSION

After consideration of the parties' arguments and application of the factors set forth in Johnson, IT IS HEREBY ORDERED AND ADJUDGED THAT,

1. Plaintiffs are prevailing party, public interest litigants;

2. Plaintiffs' Motion for Attorney Fees is GRANTED; and

3. The State of Alaska shall pay plaintiffs the sum of $148,692.70 as full reasonable attorneys' fees and costs as approved by the Clerk of the Court, and an amended final judgment shall be entered in accordance herewith.[5]

Dated at Anchorage, Alaska this 2 day of October, 1998.

SEN K. TAN
Superior Court Judge

I certify that on 10-5-98 a copy of the above was mailed to each of the following at their addresses of record:
Bamberger
Dorgan
Clarkson
Crepps
E Mueller
Secretary/Deputy Clerk

[5] This court notes that, at the time of entry of original judgment in this case, the question of attorney's fees had not been presented to the court.

In the Supreme Court of the State of Alaska

State of Alaska,

Appellant/Cross-Appellee,

v.

Planned Parenthood of Alaska & Jan Whitefield, M.D,

Appellees/Cross-Appellants.

Supreme Court No. **S-11365/S-11386**

Order
Awarding Costs

Date of Order: **1/14/08**

Trial Court Case # **3AN-97-06014CI**

On consideration of the Appellee/Cross-Appellant's **11/13/07** cost bill, and the **12/6/07** non-opposition, **IT IS ORDERED**:

1. Appellant/Cross-Appellee shall pay Appellee/Cross-Appellant **$ 8,537.22** for the following costs:

Filing Fee	$	150.00
Transcript preparation	$	7,657.37
Postage	$	41.99
Copies and printing of brief	$	687.86
Total	**$**	**8,537.22**

Clerk of the Appellate Courts

Marilyn May

Marilyn May

In the Supreme Court of the State of Alaska

State of Alaska,	)	
	)	Supreme Court No. **S-11365/S-11386**
Appellant/Cross-Appellant,	)	
v.	)	**Order**
	)	
Planned Parenthood of Alaska & Jan Whitefield, M.D,	)	
	)	
Appellees/Cross-Appellants.	)	Date of Order: **1/25/08**
	)	

Trial Court Case # **3AN-97-06014CI**

On consideration of Planned Parenthood of Alaska & Jan Whitefield, M.D.'s 11/13/07 affidavit of services rendered on appeal; the State of Alaska's 12/6/07 non-opposition to the affidavit of services rendered on appeal; Planned Parenthood of Alaska & Jan Whitefield, M.D.'s 12/21/07 motion for leave to file supplemental affidavit of services rendered on appeal, covering attorney's fees expended in responding to the petition for rehearing; and no opposition to the supplemental affidavit having been received, **IT IS HEREBY ORDERED** that, no opposition to appellees/cross-appellants Planned Parenthood of Alaska and Jan Whitefield, M.D.'s attorney's fees request having been filed by appellant/cross-appellee State of Alaska:

Appellant/cross-appellee State of Alaska shall pay to the appellees/cross-appellants **$120,897.50** in attorney's fees.

Entered by direction of an individual justice.

Clerk of the Appellate Courts

Marilyn May

Marilyn May