

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

7982 HOUSE LABOR & COMMERCE

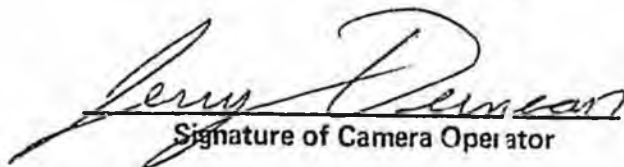
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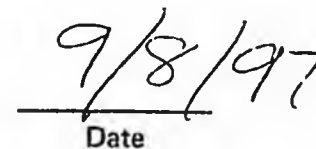


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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 10, 1993

FURTHER REFERRALS:

HESS
Judiciary
Finance

Date of Committee Action: 3/25/93

CS SB 53 (Fin) am (old) ~~53-53~~

The LABOR AND COMMERCE Committee considered:

CS FOR SENATE BILL NO. 53(FIN) am(ef'd fld) ANNULLING ABORTION FUNDING; REGULATIONS
"An Act relating to payment for abortions under Medicaid and general relief medical assistance; annulling changes made by certain regulations adopted by the Department of Health and Social Services relating to funding of abortion services under the general relief medical program."

RECOMMENDATIONS:

be replaced with _____ [] the same title

[] have attached amendments(s)

[] do pass

[] do not pass

no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal impact _____

5 fiscal note(s) Health + Social Services

[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>W.K. Williams</i>	✓	<i>[Signature]</i>	✓		
<i>Beard Porter</i>	✓	<i>[Signature]</i>	✓		
<i>Joe Sittler</i>	✓	<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	

[Signature]
CHAIRMAN'S SIGNATURE

**THE FOLLOWING PAGES MAY
NOT FILM LEGIBLY BECAUSE OF
THE POOR QUALITY OF THE ORIGINAL**

My name is Christina Joy Smith, I have come here today to speak out to you in hopes that you will listen. I am very aware that you have heard every argument on the issues at hand, both for and against.

I have however not come here today to condemn you or to judge you for your choices in this matter for that is not my place. I will leave that to a higher calling.

Instead I have come here today to remind you that you are men, chosen leaders of our people, to whom through our votes we have commended our futures and our very lives, as you sit where you are I would hope that you remember that you are the present fathers of this great state that we all live in, and your choices here today will indeed will bring into reality our tomorrow, our futures as well as yours depends on how you vote today.

We have done much for the rights of women in this nation that we live in and yet I as a women have to wonder at what we have done to preserve the rights of our men. Have we truly considered the rights of our men? In saying yes to abortion are we not in fact telling our young men you have no rights to speak up for your own children? Are we not telling husbands that they have no say in which of their children live or die? The issue of abortion is not an issue of women, it is in all truth an issue of both men and women. When a women stands up and says she is for abortion she is saying she is against your very rights to fatherhood. She is standing up alone and saying you do not count. You have no say. That in all truth she wants no part of your future. No matter who you are. Voting yes on the issue of abortion gives you the man no rights in your own home, voting yes to abortion tells the women you have no power, you are no longer the head of your own house. Nor are you worth listening to.

The issue of abortion is not an issue of money, it is not an issue of freedom, or teenagers only, it is an issue of life, an issue of home, marriage, sons & daughters no matter what their age or circumstance, our future together as a great state, and men who would stand up and say I am Responsible. I will fight for my children.

You the chosen men of our state legislature are the fathers of our today, the fathers who are responsible for our future, no matter who we are out here the laws that you pass are the ones that rule our children today. And yes you are their fathers. what message will you send out for them to live by? or die by?

In this nation in which we live there are many states who will go for the vote to say yes to abortion, I challenge each and every one of you no matter what you believe to vote to abolish abortion in our state of Alaska, I challenge you to go against the flow. Dare to be different, do not follow the crowd, vote this issue out of our great state and say

yes to family, marriages, to men, to children, to responsible behavior.

Is it not truth that if you have a problem you find an answer to it? Do you kill it or solve it? You solve it you exhaust all avenues available to you until you find the answer. Should we not do this also with our own problems?

An unwanted pregnancy is a problem whether it is a teenager or a woman married or not, poor or rich, killing the problem is not the answer finding a solution is. If we have this problem here in our state then our problems are far greater than we dare to be responsible for. We are then responsible for the solutions necessary to bring about the changes needed to turn the problem around. Do not be too hasty to kill the problem. Which you have been led to believe is the child. The problem is not the child it is the adults involved in the issue. Therefore to vote yes to abortion is to say that irresponsible behavior on the part of the adults in the matter is alright with you.

Stand up and say NO

Position Paper - CSSB 53(Fin) am(efd fld)



**AAUW-
Alaska**

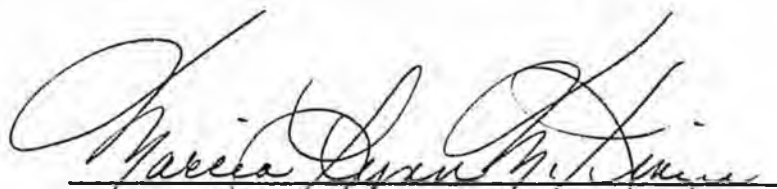
AAUW-Alaska, the statewide arm of the American Association of University, supports a woman's right to self-determination in her reproductive life. Therefore, we urge prompt passage of CSSB 53(Fin) am(efd fld) which will annul the recent amendments to regulations which determine the availability of General Relief Medical Assistance funding for abortion services. This legislation will also codify in statute that payment for both therapeutic and elective abortion procedures shall be covered for those eligible for General Relief Medical Assistance to the extent permitted under federal and state law, notwithstanding administrative regulations.

Abortion services in Alaska are costly due to a lack of general availability and the required travel. Alaska's rate of teen pregnancies remains among the highest in the nation, and the reality of an unwanted child, especially for a young woman, is most often a lifetime of poverty and bitterness. 5% of Alaska's population--20,000 children--are currently being raised by single parents supported by public funding. The cost to the Alaskan public to support these children is far more than that of terminating unwanted pregnancies. There is also a lifetime psychological burden on the both the mother and unwanted child, which cannot be measured in monetary terms.

CSSB 53(Fin) am(efd fld) will remove the unwarranted intrusion of government into the most private aspects of those Alaskan women who cannot afford medical care on their own. The amended regulations now in effect stipulate that abortion services will be covered by General Relief Medical Assistance in the cases of rape, incest or when a physician determines that there will be physical or psychological harm to the mother. This provision thus denies our Alaskan constitutional right to privacy for victims of rape and incest who are seeking appropriate medical care in order that they may attempt to resume a normal life and who may not wish to reveal the circumstances surrounding the pregnancy.

The regulations also impose a moral/religious code on a selected segment of our population. The majority of Alaskans agree that each woman has the right to control her own body. This was documented in a statewide survey conducted by Cracian & Associates in late 1991, in which over 70% of those surveyed were found to be pro-choice. That this right should not be based on a woman's financial situation is supported by the citizens of our state: In the oral and written testimony submitted concerning the amended regulations by over 8,400 individual Alaskans in 99 communities during the summer of 1992, 66% were opposed to any changes in the General Relief Medical Assistance regulations; only 34% supported changing the regulations.

AAUW-Alaska urges prompt passage of this vital legislation.



Marcia Lynn McKenzie, Chair
Campaign for Choice



To
Brock

Alaskans for Life, Inc.

... Our First Inalienable Right

P.O. Box 32186

Juneau, AK 99803-2186

March 23, 1993

TESTIMONY PRESENTED TO HOUSE LABOR AND COMMERCE COMMITTEE, MARCH 23, 1993 REGARDING COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53, AN ACT ANNULING DH&SS REGULATIONS RELATING TO FUNDING OF ABORTION SERVICES

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

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

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

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

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

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

*Ida Barnash
President
Alaskans for Life Inc*

Walter Levy.

Bauer had 57 stores when Shea purchased the company; today it has 265. They are heavily concentrated in mall locations where there are high densities of Bauer catalog purchasers. That cannibalized catalog sales initially, but Shea found that within 18 months catalog sales came back. And the stores won new customers who prefer to try the stuff on.

Recognizing that people had less money to spend, Shea heavily revamped his merchandising. He reduced the variety of men's shorts, for example, and piled the remaining styles higher. He has remodeled 60 of the stores, making them more outdoorsy, with more camping and fishing gear hanging on the walls. Shea cut prices, too. Bauer does a big business in \$20 polo shirts and \$30 blue jeans—hardly gear for mountain climbers or fly fishermen.

Bauer's sales jumped 17% last year at stores open for more than a year. Sales exceeded \$400 a square foot, impressive for any retailer. Some 30% of Spiegel's revenues now come from retail stores, up from nothing five years ago. And Bauer, with its higher-margin private-label merchandise, has the potential to outearn Spiegel's slower-growth women's catalogs.

Not every Shea deal worked as well as Bauer did. In 1991 he had to write off nearly half of his \$23 million investment in Honeybee, a higher-priced retail chain and catalog featuring women's dresses. Crayola for Kids, a children's clothing venture, has fared poorly. But, For You From Spiegel, a catalog with clothing for large-size women, has expanded to ten retail stores. And later this year Spiegel will bring out E Style, a line of clothing designed in conjunction with *Ebony* magazine.

Although the U.S. public owns 12% of Spiegel's 52 million common shares, outright control has rested since 1982 in Germany's Otto family, whose privately held Otto-Versand GmbH is the world's largest catalog retailer, with sales of \$13 billion.

With the Ottos solidly behind him and with Bauer clicking ahead, Jack Shea now has his sights set on more acquisitions. "Thanks to Bauer," he says, "we won't be afraid to buy a retailer."

In the latest twist in deep-pocket legal theory, a girl sued her mother after her father abused her sexually. Why mom? Because she was covered by insurance; dad, the perpetrator, was not.

Find the deep pocket

By David Frum

FOR FIVE YEARS, until she ran away from home at 17, Denise Richie of Webster, Minn. was sexually abused by her father, Dennis Richie. The abuse plunged her into depression and mental instability, including suicide attempts. In 1991 she finally pulled herself together and brought criminal charges against her father, who was sentenced to ten months in the workhouse.

And then, her lawyers brought a lawsuit against . . . Richie's mother.

Her mother? To be sure, Lanell Richie had turned a blind eye to the abuse, refusing to believe the story when it was told to her, ignoring the evidence that two other family members and a family friend had suffered abuse, too, even telling a police officer she had suspicions that something was going on between her husband and her daughter.

But that's not why the lawsuit was brought against the mother, or, to be precise, against the mother and father jointly. The lawsuit was brought because the Richies' household insurance policy, like most insurance policies, does not insure against intentional wrongdoing.

Sue Mr. Richie for his crime, and you get whatever you can collect from his pay packet as a systems operator at the local power company. But sue Mrs. Richie and—bingo!—you are suing an insurance company, in this case the West Bend Mutual Insurance Co. If the Richies' policy didn't cover wrongdoing, it did cover negligence. And, reasoned attorney Kathy Ta-

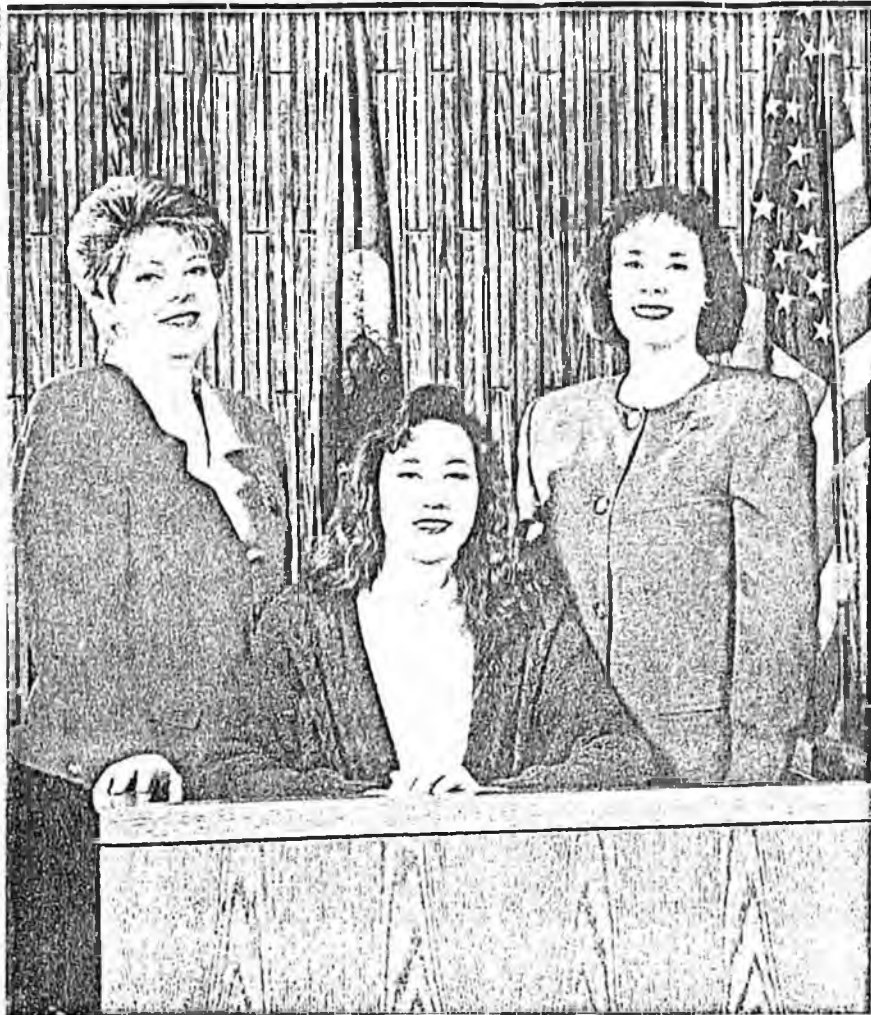
tone, wasn't Mrs. Richie negligent? In a jury trial last October, Tatone won for her client, Denise Richie, a judgment for \$2.4 million—\$1 million in punitive damages against Mr. Richie, the other \$1.4 million in a negligence judgment.

Tatone and her cocounsel, Sarah Mardell, appear to be the very first in America to win a sizable judgment against a mother for negligence in a child abuse case. Two weeks later, Earl Drott of Tyler, Tex. became the second. He won \$3.4 million by suing a Texas couple after the man molested the woman's two preteen daughters. The mother has now filed a claim against her insurance company, Foremost Insurance Co. of Grand Rapids, Mich., for the \$1.7 million judgment against her.

Everybody agrees that child abuse is an appalling crime. The dispute that these two verdicts raise is, who should be punished for it? The child abuser? Or everyone who pays a premium for household insurance?

Until recently, society's answer was unequivocal. Almost all states forbade family members to bring lawsuits for financial damages against one another. But over the past 30 years these statutory barriers have been dropped and state after state has welcomed lawyers into the exciting new area of "domestic tort."

According to Tatone, domestic tort law is simply a logical outgrowth of traditional personal injury law. "If I were not watching carefully, and one of my children fell down the steps and



Sex-abuse plaintiff Denise Richie (center) with lawyers, Kathy Tatone and Saran Mardell
Targeting an insurance company's deep pockets. The judgment: \$1.4 million against Richie's parents for negligence.

hurt himself, he could sue me for negligence," she says.

But as the Richie case shows, domestic torts contain dangerous temptations that may help explain why so many states forbade them for so long: At the same time Denise Richie was suing her parents in civil court, she was in criminal court asking that her father receive a sentence lenient enough to permit him to keep his job—because he was the sole support of her mother and younger brother. Her request was granted, and her father got off lightly.

Leonard Karp, a Tucson attorney and author of a book about domestic torts, defends the principle of such suits, saying: "If the victim has been injured—and there are often hideous injuries which require years and years of therapy—why should they not re-

cover damages?"

A generation ago few would have taken Karp's argument seriously. The answer to his question would have been obvious: No matter how gravely you have been injured, you can recover damages only if someone else is at fault—has committed a tort—and only from the actual tort-feasor, not from some third party chosen because he or she happens to have money or insurance.

Karp's question is based on a new way of thinking about the tort system, a way of thinking that has spread since the 1970s and holds that the tort system's purpose is not only to punish wrongdoing, but to find somebody—anybody—with money to pay the victim. "This is part of the concept of finding the deep pocket," says Karp. For his services in finding a handy

pocket, Karp always offers plaintiffs a choice of an hourly rate or a contingency fee, but virtually all his clients choose his contingency fee of generally between 25% and 35%, depending on the difficulty of the case, plus expenses.

The deep pocket does not always have to be an insurance company. Karp has sued the Roman Catholic Church for negligence in cases involving the sexual molestation of children by priests.

But for those worried about the implications of deep-pocket legal theory there was good news recently—and it comes from, of all places, litigation-happy Texas. In an important case decided in December, *Boyles v. Kerr*, the Supreme Court of Texas issued a warning that there is a limit to how far plaintiffs' attorneys can go in turning cases of intentional wrongdoing into negligence in order to collect insurance money.

Dan Boyles Jr. and three friends secretly videotaped sex between Boyles and his girlfriend, Susan Leigh Kerr, in August 1985. Boyles showed the tape three times to groups of friends, and word of it quickly spread through the University of Texas at Austin and Southwest Texas State University, where Boyles and Kerr were enrolled.

Kerr was understandably furious and humiliated. She sued Boyles and the three others who had taped her. This could have been an open-and-shut case, if Kerr had chosen to base her theory on the Texas tort of "intentional invasion of privacy." But, apparently because of the rule that insurance does not insure against intentional wrongdoing, her attorney brought a different claim: "negligent infliction of emotional distress." In 1989 a Houston jury awarded Kerr \$1 million, \$500,000 in uninsurable punitive damages and a \$500,000 negligence judgment.

The Supreme Court of Texas overruled the judgment. It said that Boyles and his hooligan pals can be made to pay for what they did; their insurance companies cannot.

That's an old, but potentially radical, idea. Taken seriously, it would hold the burgeoning and lucrative specialty of domestic tort to its proper limits. ■

Kathy Poller

Diary of an Unborn Child

October 5-Today my life began. My parents do not know it yet, I am as small as a seed of an apple, but it is I already. And I am to be a girl. I shall have blond hair and blue eyes. Just about everything is settled though, even the fact that I shall love flowers.

October 19-Some say that I am not a real person yet, that only my mother exists. But I am a real person, just, as a small crumb of bread is yet truly bread. My mother is. And I am.

October 23-My mouth is just beginning to open now. Just think, in a year or so I shall be laughing and later talking. I know what my first word will be: MAMA.

October 25-My heart began to beat today all by itself. From now on it shall gently beat for the rest of my life without ever stopping to rest! And after many years it will tire. It will stop, and then I shall die.

November 2-I am growing a bit every day. My arms and legs are beginning to take shape. But I have to wait a long time yet before those little legs will raise me to my mother's arms, before these little arms will be able to gather flowers and embrace my father.

November 12-Tiny fingers are beginning to form on my hands. Funny how small they are! I'll be able to stroke my mother's hair with them.

November 20-It wasn't until today that the doctor told mom that I am living here under her heart. Oh, how happy she must be! Are you happy, mom?

November 25-My mom and dad are probably thinking about a name for me. I want to be called Kathy. I am getting so big already.

December 10-My hair is growing. It is smooth and bright and shiny. I wonder what kind of hair mom has.

December 13-I am just about able to see. It is dark around me. When mom brings me into the world it will be full of sunshine and flowers. But what I want more than anything is to see my mom... How do you look, mom?

December 24-I wonder if mom hears the whispering of my heart? Some children come into the world a little sick. But my heart is strong and healthy. It beats so evenly: tup-tup, tup-tup. You'll have a healthy little daughter, mom!

December 28-Today my mother killed me.

Kathy Polk
P.O Box 020196
Juneau, Alaska 99802
463-4846

Dear Friends,

My name is Kathy Polk, I am a native of Juneau, Alaska. I realize that SB53 bill is just one of the many decisions that you must vote on. I know that you have a responsibility to the many people of Alaska who have voted you into office to represent them to the best of your ability.

I have been doing some studying on what code of ethics our country was built on. I have read that the United States of America's code of ethics stands for freedom, Liberty, and it was built on the code of ethics of God almighty and his word that is in the Holy Bible.

When America was established, it was so that man could have freedom. In the dictionary freedom is defined : the state of quality of being free; (a) exemption or liberation from the control of some other person or some arbitrary power; liberty; independence.

The Liberty Bell was made as an object of great reverence to Americans because of its association with the historic events of the War of Independence. It has an inscription on it from God's Holy Bible that is taken from Leviticus 25:10: "Proclaim liberty throughout all the land unto all the inhabitants thereof." On our money "In God We Trust," is inscribed. Our national Song "America the Beautiful speaks of how God shed his grace on thee." Our pledge of allegiance reads: "I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God with justice and liberty for all." You are probably wondering why I am giving you a little history lesson.

I would like you to remember what our country was built upon the rock of Jesus Christ and the word of God. There was a time when all men, women and children were protected by our leaders from evil and wrong doers because we cherished our country and our people. Our young was protected like that of precious gold.

If it has worked for hundreds of years to have God as the head of our nation than why are we trying to change what was good. I am talking about the lives of our people that includes the unborn citizens.

It is true that we live in a country that has a decreasing economy and as

a solution to overcome the obstacles of the high cost of raising children our government has found it favorable support abortion which has 5000 babies put to death everyday in the battlefield of the womb. The abortionist, poor women and groups of pro-death support the massacre of the innocent babies who had nothing to do with their creation.

The whole code of ethics that our country was built upon does not remember that the unborn babies are also citizens of our nation.

Wouldn't it better to use our hard earned money to pay for education for women and teenagers to control birth control. Because, once the women and teenagers who have come to realize what has happened and what they allowed to happen to another human being they go into post-abortion depression, and maybe guilt. Who is there to help the women to overcome this problem? There are many things to consider if you truly feel compassion for the poor women. It is true that some of the women had gotten pregnant beyond their control yet, anyone who reads the paper can see that the rapists and offenders of incest do not have to pay a very high cost for their crimes. They certainly do not have to pay the price of their lives.

On Tuesday, March 23, 1993, in the Juneau Empire, there was an article that caught my eye. It was "Police charge woman with cruelty to animals. A local woman was starving three cats and she can be punished with a possible, \$1000 fine and 90-day jail sentence for her crime.

If a woman was pregnant with lets say twins, and she was in her third or fourth month of pregnancy she could have her babies killed in a cruel manner as long as the babies are still in her womb and the government would not punish her but rather help her financially by paying a doctor to insert a vacuum into her uterus to break perfectly healthy babies apart piece by piece and use forceps to smash the heads of the children then suck the babies heads out of the womb with a vacuum.

Tell me, is the woman who starved her cats more cruel then the woman who had her babies killed and removed from her womb? Are the cats more important the human life of humane babies? Our President seems to think the unborn are not so important, for he is endorsing a bill to use the unborn babies for studies, and what that means it that they will be taken out of the womb alive and then dissected like mice for the cause of medicine. Even here in our legislature, we have a bill that is put forward to allow the babies to be killed right up to the time of birth. I ask you to visulize what happens to the unborn that were killed by abor-

tion the next time you look at a newborn child.

You are the leaders who rule this state. The responsibility of the people of this state lies in your hands. If you tell us that we must pay higher taxes then we must. If you tell us that we cannot kill wolves, we can't. If you do not pass this bill that supports the taking of innocent lives of unborn children then I know that the God who this country was built upon will bless you for listening to his word that supports life for all mankind.

He loves each one of you so much that his word became man to become the crucified Lamb that made a way that none should perish to death. For with him is eternal life. We all have souls and our souls lives forever even when our worn-out bodies are put into the grave. Our souls will live eternally in Heaven or Hell. If we are for God Almighty and invite him into our hearts by repentance then we will have eternal life in Heaven, if we go against the word of God and not repent then he has no choice but to let the devil have us to live with him. The choice is yours and mine. Keep this in mind and I will continue to pray that God will give each one of you wisdom and insight to do what is right in the eyes of God..

As a Christian I know that we are in the last days and God will be coming after his Christians, won't you join us. Nothing is worth the price of not having eternal life with God, I encourage you to make the right choice for the freedom of the unborn children who are at your mercy. God is watching each move that we all make. May he richly bless you.

Dale
Anderson

Senate Bill 53 to abolish Gov's Regulations on Abortion Funding
Testimony before Labor/Commerce Committee
Rep. Bill Hudson, Chair
March 25, 1993

It should come as no surprise to any here, that I stand adamantly opposed to Senate Bill 53 which obliterates the efforts made by Governor Hickel to stop utilizing state dollars to fund abortions.

I ask that you hear these words that have been written from my heart. These are words that constitute the core of my existence and my hope for the future of our state and nation. They may ring of rhetoric and emotion... but they are sincere.

The debate over abortion is admittedly complex. It has medical, legal, theological, ethical, social and personal aspects. It is also a highly emotional subject, for it touches on the mysteries of human sexuality and reproduction, and often involves acutely painful dilemmas.

Yet society cannot opt out of personal decision-making or public discussion regarding this topic merely because of its complexity.

More babies have been killed in America during the past fifteen years than people murdered in all of history's wars. Four thousand Americans died today...and yesterday...and the day before...In fact, half the Americans entering abortion clinics today, never came out alive!

Abortion is a huge and greedy business - subsidized by American taxpayers to the tune of \$140 million annually.. yet 77% of the taxpayers say abortion should not be legal except to save the life of the mother after the first 3 months of pregnancy. Since 1973, women have paid an average of \$300 per abortion - \$5 billion - for the privilege of killing what would have been (for many) their first born. Each death was marketed, planned and purchased. The grisly sales alone would put the abortion industry in the Fortune 500 as one of the largest in our nation.

The total number of legal and illegal abortions throughout the world was estimated in 1968 to be between 30 and 35 million. Today it is estimated that as many as 55 million abortions take place each year, which means that more than one abortion occurs every second.

page 2

Dale Anderson Testimony before Labor/ Comm Committee SB53

3/25/93

Any society which can tolerate these things, let alone legislate for them, has ceased to be civilized. Indeed, modern abortion is even worse than the ancient Roman exposure treatment of unwanted babies because it has been commercialized, and has become, at least for some doctors and clinics, an extremely lucrative practice. But reverence for human life is an indisputable characteristic of a humane and civilized society.

Roe v. Wade, the 1973 decision legalizing abortion, was the final blow for traditionalists. Not only was it seen as a rejection of America's commitment to the sanctity of life, but as a repudiation of moral values as a factor in court decisions. For the first time the justices excluded moral and philosophical arguments from their determination.

But men and women need more than a religious value system. They need civil structures to prevent chaos and provide order. Religion is not intended or equipped to do this; when it has tried, it has brought grief on itself and the political institutions it has attempted to control. An independent state is crucial to our society.

In response to the popular myth, "You can't legislate morality", I ask you to consider with me, that, ... whatever happens, our society will have values. The only question is, whose will they be? Public officials, perhaps more than most people, are fond of saying they have no right to impose their moral beliefs on others. That's equivalent to saying their obligation is to make only value-free judgments. That's nonsense. They would have to remain mute about all public policy issues. To make a value-free judgment is to make no judgment at all.

Anyone still convinced that "you can't legislate morality" should turn to the civil rights movement of the '60s. Honest scholars and the media must acknowledge that the civil rights movement was driven by deep religious convictions - just as were the anti-slavery and abolitionist movements in the United States and England. What our nation conclusively legislated was this conviction: "All men and women are created equal." We not only legislated morality, we legislated theology.

All laws are impositions on someone, unless they are unanimously supported. Some Americans were not pleased when women were given the right to vote through ratification of the 19th Amendment in 1920. But the majority imposed its will on the minority, constitutionally enforcing the moral conviction that justice required that women be treated equally and no longer disenfranchised.

To you as Legislators, I say: Be persons of courage and integrity. Enact laws which reflect that which is most noble in humankind; laws which challenge your constituents to be their best selves.

Do not rely upon your own wisdom, for you too are mere humans afflicted with the same shortcomings as the rest of us. I urge you to draw upon the wisdom of God and enact laws embodying the eternal principles of the Judeo-Christian ethic.

I urge you to remember that you are not simply enacting statutes, but shaping the soul of our nation and our state.

Perhaps Patrick Henry expressed it best in his address at St. John's Church on March 23, 1775:

"Shall we try argument? ...Shall we resort to entreaty? ...What terms shall we find which have not been already exhausted? ...We have petitioned, we have remonstrated, we have supplicated... We have been spurned with contempt...There is no longer any room for hope...Is life so dear or peace so sweet as to be purchased at the price of chains? ...Forbid it. Almighty God! ... I know not what course others may take, but as for me, give me liberty or give me death!"

In a like vein, I ask you: Is your life so dear,is the status quo so sweet, ...is your political career so precious, as to be purchased at the price of twenty-five million unborn babies? Is the favor of men and women so important that we will choose it at the price of one and a half million unborn babies every year? God Forbid!

Dale Anderson

page 4 Testimony before Labor/Comm Committee SB53
3/25/93

Today, you as our Representatives have a choice to make. You may allow this bill to pass to the next committee or to say NO... ..NO to letting the OUR state government spend OUR money to abort unborn Alaskans.

As private citizens or lawmakers, may we speak as with one voice:

I know not what course others may take, but as for me, I am going to speak up for those who cannot speak for themselves. With all that is within me, I am going to defend the cause of the weak and fatherless. I am going to speak to maintain the rights of the poor and the oppressed. I am going to do everything within my power to rescue the pre-born, to deliver them from certain death at the hand of the abortionist. This I will do, whatever the cost, so help me God!



... Our First Inalienable Right

Alaskans for Life, Inc.

P.O. Box 32186
Juneau, AK 99803-2186

FOR IMMEDIATE RELEASE

Contact: Sidney Heidersdorf
907-789-9858
Oct. 21, 1992

ALASKANS FOR LIFE, INC TALLIES ABORTION VIEWS

Alaskans For Life, Inc today released the results of their count of the public testimony, written comments and petition signatures relating to the Department of Health and Social Services proposed regulations to restrict public funding of welfare abortions. The Alaskans For Life count shows that statewide 58.5% of the people counted supported the Hickel Administration steps to reduce funding for abortions.

"While numbers have never been the issue with us we are pleased to see the solid support for the Governor," said Ida Barnack, President of Alaskans For Life. "Our only reason for counting the signatures was because of the possibility of the count being conducted by the League of Women Voters. They cannot be considered neutral on the issue of abortion since they have taken a pro-abortion position nationally," she said.

Barnack emphasized that her group feared the use of criteria by LWV which would minimize the actual support statewide that exists for abortion restriction of all kinds not just public funding. "When people realize that abortions are legal for the full term of the pregnancy without parental knowledge or consent, without a woman's informed consent, for any reason, the majority want some restrictions," she said. Barnack said her group wants the Hickel Administration to promulgate the regulations and fight for further restrictions regardless of a numbers count. "You don't take a vote to do what is right," she said.

Alaskans For Life, Inc is a Juneau based right to life organization which opposes abortion.



Alaskans for Life, Inc.

... Our First Inalienable Right

P.O. Box 32186
Juneau, AK 99803-2186

DETAILED TALLY OF ABORTION FUNDING TESTIMONY, WRITTEN COMMENTS AND PETITIONS (Hickel Administration proposed Regulations to restrict welfare abortion funding)

	<u>Pro-life</u>	<u>Pro Abortion</u>	<u>Other</u>
TESTIMONY-VOL. 1			
Teleconference (TC-1)*	62	106	--
Teleconference (TC-2)**	58	53	--
Juneau	50	121	--
Fairbanks	84	66	--
Anchorage	129	91	5
WRITTEN COMMENTS			
DH&SS VOL 2 - 11	3,276	1,285	58
PETITIONS			
DH&SS VOL 12	----	679	--
VOL 13(Ketchikan H. B. 509)	641	---	---
VOL 14			
Kodiak Hospital Board	344	---	---
Call to Compassion (Anchorage)	3,264	---	---
Call to Compassion (Fairbanks)	606	---	---
Petition to Pres. Bush	428	---	---
VOL 15 THRU 20	6	3,869	1
	-----	-----	-----
TOTALS:	8,948	6,270	64
PERCENTAGES:	58.5	41	0.4

NOTE:

- * TC-1 A.M. Soldotna, Homer, Valdez, Seward,
Glenallen
P.M. Bethel, Kotzebue, Nome, Barrow
- ** TC-2 A.M. Ketchikan, Petersburg, Sitka
Wrangell
P.M. Mat-Su, Delta Junction, Kodiak
Dillingham

Representative Bill Hudson, Chairman
House Labor + Commerce Committee
State Capitol
Juneau, AK 99801-1182

March 23, 1993

Dear Sir:

We are opposed to Senate Bill 53 which would annul changes relating to the funding of abortion services under the general relief medical program.

The public funding of abortion, regardless of where the funds originate, is inconsistent with the "pro-choice" viewpoint. It is perplexing that supporters of public funding of abortion wish to have their "choice," but at the same time deny our "choice" of not wanting public funds to finance abortions.

The funding of the bill interests us as well as it calculates savings from the increased number of abortions. However this is inconsistent with the "pro-choice" viewpoint as calculating how much the State of Alaska will save is admitting that the fetus is a baby. Thus, if the fetus is a baby, then the argument over abortion ends as the people supporting the "pro-choice" movement would finally have to admit the viability of the fetus as a baby. But if the existence of a baby is still denied during pregnancy, then we can't calculate the amount of money the State of Alaska will save after the abortion because according to the "pro-choice" viewpoint, the aborted fetus was never a child. With this in mind, Senate Bill 53 is not based on sound financial ground.

We are strongly against Senate Bill 53.

Sincerely,

Mark Dinkel
Mark Dinkel
Lesley B. Dinkel
Lesley Dinkel
Box 174
Eumonek, Alaska 99581

March 21, 1993

Bill Hudson
House of Representatives
State Capitol
Juneau, Ak 99801-1182

Dear Representative Hudson,

Senate Bill 53 would rescind recently adopted regulations which limit State funding of elective abortion. The only abortions not funded would be for the most trivial reason. Since the aborting physician can certify the need for the procedure any woman and doctor who wanted to could do one. To overturn these weak regulations amounts to aggressive promotion and funding of abortion.

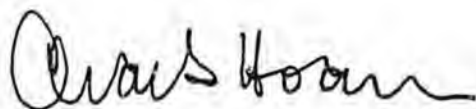
I am asking for moderation on this issue as a legislator. Please seek justice and fairness in this area. Most people who consider themselves pro-choice do not think that abortion is an ideal way to deal with an unwanted pregnancy. Intellectually honest pro-choice advocates do not deny that a unique human life is destroyed during abortion. Yet most legislators are rushing to pass legislation that would force the state to pay even for these trivial abortions. The state does not pay for other elective, non required medical procedures. Now SB 53 has been amended to require priority State funding for abortions. This amounts to aggressive State promotion of abortion.

The new regulations are so loose that pro-choice and pro-life people have characterized them as a crumb the Governor threw to his pro-life constituency. Most pro-lifers are not satisfied because they do not go far enough. But if it saves one life or causes someone to ponder the truth of what abortion is, then it is better than nothing.

A crumb will never satisfy those who hunger for justice for these small silent children who are destroyed through abortion. But I beg you, on their behalf to leave this tiny area safe for them. Vote against SB 53. For this I thank you and applaud your courage.

If you still insist on voting for SB 53, you insist on blowing out this little crumb of protection against paying for the most trivial of abortions. Do you want to enact a statute promoting funding of abortion for birth control and sex selection? I pray you reconsider.

Charles Horan
PO Box 2003, Sitka, Ak 99835
Phone 747-6666 day, 747-6471 eve, Fax 747-7417



Public Opinion Message

Only those single messages delivered by the signing individual to the Legislative Information Office by phone or fax, hand-delivered or written at the Legislative Information Office will be accepted for transmission via electronic mail as a Public Opinion Message. We require the following information to be held confidential: (1) name address and phone number of sender, (2) who the POM should be addressed to, (3) the text of the POM (50 words or less), and (3) when possible, the bill number referenced in the POM. Your message may be directed to any individual or combination of the following members of the Legislature.

Delegations	
<input type="checkbox"/>	Anchorage Delegation (*)
<input type="checkbox"/>	Fairbanks Delegation (+)
<input type="checkbox"/>	Mat-Su Delegation (*)
<input type="checkbox"/>	Blanch Caucus (#)

Senate			
<input type="checkbox"/>	Adams*	<input type="checkbox"/>	Lincoln#
<input type="checkbox"/>	Donley*	<input type="checkbox"/>	Little
<input type="checkbox"/>	Dunnean#	<input type="checkbox"/>	Miller+
<input type="checkbox"/>	Ellis*	<input type="checkbox"/>	Pearce*
<input type="checkbox"/>	Frank+	<input type="checkbox"/>	Phillips*
<input type="checkbox"/>	Hailford^	<input type="checkbox"/>	Rieger+
<input type="checkbox"/>	Jackow#	<input type="checkbox"/>	Salo*
<input type="checkbox"/>	Kelly*	<input type="checkbox"/>	Sharp+
<input type="checkbox"/>	Kertula^	<input type="checkbox"/>	Taylor
<input type="checkbox"/>	Loman*	<input type="checkbox"/>	Zharoff#

House					
<input type="checkbox"/>	Barnes*	<input type="checkbox"/>	Hoffmann#	<input type="checkbox"/>	Oberg#
<input type="checkbox"/>	Brice+	<input type="checkbox"/>	Hudson	<input type="checkbox"/>	Parnell*
<input type="checkbox"/>	Brown*	<input type="checkbox"/>	James+	<input type="checkbox"/>	Phillips
<input type="checkbox"/>	Eunde*	<input type="checkbox"/>	Kott+	<input type="checkbox"/>	Porter*
<input type="checkbox"/>	Carney^	<input type="checkbox"/>	Larson^	<input type="checkbox"/>	Sanders*
<input type="checkbox"/>	Davidson#	<input type="checkbox"/>	Mackie#	<input type="checkbox"/>	Silton+
<input type="checkbox"/>	Davies+	<input type="checkbox"/>	MacLean*	<input type="checkbox"/>	Thomaut+
<input type="checkbox"/>	Ozvia, B.*	<input type="checkbox"/>	Martin*	<input type="checkbox"/>	Tochey*
<input type="checkbox"/>	Davis, G.	<input type="checkbox"/>	Menard^	<input type="checkbox"/>	Ulmer
<input type="checkbox"/>	Finkelstein*	<input type="checkbox"/>	Moses#	<input type="checkbox"/>	Vezay+
<input type="checkbox"/>	Foster#	<input type="checkbox"/>	Mulder*	<input type="checkbox"/>	Williams
<input type="checkbox"/>	Green*	<input type="checkbox"/>	Navarre	<input type="checkbox"/>	Wills*
<input type="checkbox"/>	Grussendorf#	<input type="checkbox"/>	Nichols#	<input type="checkbox"/>	
<input type="checkbox"/>	Harley*	<input type="checkbox"/>	Norlund*	<input type="checkbox"/>	

Committees	
Indicate H for House or S for Senate.	
<input type="checkbox"/>	Community & Regional Affairs
<input type="checkbox"/>	Finance
<input type="checkbox"/>	Health, Education & Social
<input type="checkbox"/>	Judiciary
<input checked="" type="checkbox"/>	Labor & Commerce
<input type="checkbox"/>	Resources
<input type="checkbox"/>	Rules
<input type="checkbox"/>	State Affairs
<input type="checkbox"/>	Transportation

Name	Debbi Lawe	Phone (H)	225-8095
Title		Phone (O)	225-3515
Address	P.O. Box 1019 Ward Cove, Ak.	ZIP	99928-1019

Subject: SB 53			
1 I	3 urge	5 you	7 to
2 support	4 this	6 will	8 that
9 just	10 cleared	11 the	12 senate.
13 abortion	14 rights	15 are	16 legal
17 in	18 Alaska	19 to	20 refuse
21 one	22 segment	23 of	24 the
25 population	26 (law)	27 income	28 families)
29 is	30 clearly	31 discrimination	32 please
33 support	34 a	35 woman's	36 right
37 to	38 choose	39 to	40 have
41 or	42 not	43 have	44 an
45 abortion	46 Thank	47 you.	48
49	50		

Support
 Oppose
 Amend
 None

Signature: Debbi Lawe

01/01/93

Public Opinion Message

Only those single messages delivered by the signing individual to the Legislative Information Office by phone or fax, hand-delivered or written at the Legislative Information Office will be accepted for transmission via electronic mail as a Public Opinion Message. We require the following information to be held confidential: (1) name address and phone number of sender, (2) who the POM should be addressed to, (3) the text of the POM (50 words or less), and (3) when possible, the bill number referenced in the POM. Your message may be directed to any individual or combination of the following members of the Legislature.

Delegations
Anchorage Delegation (*)
Fairbanks Delegation (+)
Mt-Si Delegation (*)
Bush Caucus (#)

Senate	
Adams#	Lincoln#
Donley*	Little
Duncan#	Miller+
Ellis*	Pearce*
Frank+	Phillips*
Hallford^	Rieger*
Jacko#	Salo*
Kelly*	Sharp+
Kertuda^	Taylor
Laman*	Zharoff#

House		
Barnes*	Hoffman#	Oberg#
Brice+	Hudson	Parnell*
Brown*	James+	Phillips
Bunde**	Kott*	Porter*
Carney*	Larson*	Sanders*
Davidson#	Meekie#	Simon+
Davis+	McLean#	Theriault+
Davis, B.*	Martin*	Toohay*
Davis, G.	Menard*	Ulmer
Finkelstein*	Moses#	Vezay+
Foster#	Mulder*	Williams
Green*	Navarro	Wills*
Gruzsandarb	Nicholas#	
Harley*	Nordlund*	

Committees
Indicate H for House or S for Senate.
Community & Regional Affairs
Finance
Health, Education & Social
Judiciary
<input checked="" type="checkbox"/> Labor & Commerce
Resources
Rules
State Affairs
Transportation

Mr., Mrs., Miss, Dr., Etc.

Name	Cheryl Mel Parney	Phone	225-5641
Address	652 Park, #30		
City	Ketchikan, AK	ZIP	99901

Subject			
1. Please	2. support	3. SB.53	4. I
5. believe	6. all	7. women	8. should
9. have	10. the	11. right	12. to
13. choose	14. an	15. abortion	16. regardless
17. of	18. financial	19. status	20.
21.	22.	23.	24.
25.	26.	27.	28.
29.	30.	31.	32.
33.	34.	35.	36.
37.	38.	39.	40.
41.	42.	43.	44.
45.	46.	47.	48.
49.	50.		

Support Oppose Amend None

Signature Cheryl Mel Parney 01/13/93



Testimony in Support of SB 53

Presented to the House Labor and Commerce Committee

March 23, 1993

by Donna Hurdle MSW, Executive Director

Alaska has a long tradition of respecting the right to privacy in women's decisions about their reproductive health. We also have a long tradition of non-discrimination with respect to that right. On behalf of Planned Parenthood of Alaska, I urge you to support SB 53, which would annul the recently signed regulations limiting state funding of abortions for poor women.

Our three clinics serve many Medicaid-eligible women, some of whom have unplanned pregnancies which, if continued, would create severe hardships for them and their families. Many of them simply cannot afford the cost of an abortion. It is patently unfair that poor women who decide pregnancy is against their best interests must exercise their legal right to an abortion at their own expense while those who choose to continue a pregnancy receive state-funded medical care for themselves and their children. We must not allow the governor to impose his own value judgment on women's lives in this intrusive way.

Just over ten years ago, 59% of Alaska voters opposed a ballot initiative prohibiting state funding of abortion except to preserve the life of the woman. In late 1990, a statewide survey of Alaska voters conducted for Planned Parenthood showed that 61% agreed with state funding of abortions for poor women. A statewide survey of voters conducted for the Anchorage Daily News this past October showed that 58% believed the Governor's proposed regulations were wrong. Both the 1990 and 1992 survey results are almost identical to the percentage of voters opposing the 1982 ballot initiative. Clearly, public opinion remains strongly in favor of giving poor women access to the same legal reproductive choices that other women have.

Within three weeks of Governor Hickel's July announcement that he would move to limit state funding of abortions, more than 4,000 people around the state signed petitions opposing the proposed regulations. Five months later, we continue to receive petitions from all over Alaska even though the active solicitation of signatures ended when the public comment period was over. Alaskans are vitally concerned that we not abandon our tradition of providing equal access to abortion for the rich and the poor.

We urge the Labor and Commerce Committee to report this bill out favorably and to seek a commitment for a vote on the House floor at the earliest possible time. Thank you.



A United Way Agency

406 W. Fireweed Lane, Suite 103 • Anchorage, Alaska 99503 • (907) 277-4822



HOLIDAY INN ANCHORAGE

TO: Rep. Bill Hudson

CO: House Labor and Commerce Committee

FAX #: 465-6790

DATE: March 22, 1993

PAGES: 3 including
this cover

FROM: Connie and Scot Akers

HOLIDAY INN ANCHORAGE

FAX (907)258-4733

TELEPHONE (907)279-8671

HOLIDAY INN ANCHORAGE 239 WEST FOURTH AVENUE ANCHORAGE ALASKA 99501



March 20, 1993

P.O. Box 186
Emmonak, AK 99581

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Hudson:

In light of the House Labor and Commerce Committee's, March 23, Public Hearing on Senate Bill Number 53, we respectfully request that you consider the following as part of the public record.

We oppose Senate Bill Number 53 and support Governor Hickel's action to stop funding abortions with public money. In funding abortion the State goes beyond affirming a woman's "right to choose" and actively supports and promotes abortion. Abortions funded under General Relief Medical lack any reasonable restrictions. Late term abortion would not fall out of the scope of those available for public funding. As such, the State may well fund the abortion of viable children. Additionally, most of the abortions performed under General Relief Medical will be for birth control purposes. We find this most objectionable.

The Fiscal Notes accompanying the Bill are alarming. Four of the five notes project a "savings" to the State as a result of "avoidance" of having to provide assistance to mothers and newborns. The fiscal considerations of Senate Bill No. 53 are much broader than what the Fiscal Notes admit. To correctly assess the cost to the State the following should be considered:

- A. treatment of depression/Post-Abortion Syndrome in abortive women;
- B. possible effects of the devaluation of human life in society manifesting itself in increased child abuse, domestic violence, etc.

- C. discarded human potential of the estimated 329 aborted children per year projected from FY 91 records; and
- D. the cost of these birth control abortions (\$880.00 each) verses less expensive contraceptive measures.

A more prudent use of the monies from the General Relief Medical Fund could be to place full-time physicians in several of the larger rural villages. This would truly result in a savings to the State as the constant parade of publicly funded medical support people coming into these villages could be eliminated.

Sincerely,

Scot Akers
Connie L. Akers

Scot and Connie Akers

Alaska State Legislature

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



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

Senate Committee on Health, Education and Social Services

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

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

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

(4) physician services if

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

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

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

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

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

[(F) provided for a therapeutic abortion;]

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

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

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

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

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

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

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

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

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

Alaska State Legislature

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



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

Senate Committee on Health, Education and Social Services

CS SB 53(Fin) am(efd fld) "An Act relating to payment for abortions under Medicaid and general relief medical assistance; annulling changes made by certain regulations adopted by the Department of Health and Social Services relating to funding of abortion services under the general relief medical program."

CS SB 53(Fin) am(efd fld) annuls the changes made by the new regulations and amends the Medicaid and GRM statutes so that similar regulations could not be adopted in the future.

Section 1:

(a) Makes it clear that the old statutes allowed state funding for abortions.

(b) Intent is that abortions are eligible for funding under the regulations as they existed in December 1992.

Sec. 2.

Changes the Medicaid statutes. Adds a new section to the Medicaid statutes saying the department shall pay for abortions to the extent permitted under federal law and if not permitted under federal law, a person eligible for assistance under this chapter shall be covered under the GRM statutes.

Sec. 3.

Changes the GRM statutes. Adds a new section to the GRM statutes saying the department shall pay abortion costs for a person who is otherwise eligible for assistance under Medicaid or GRM statutes, with equal priority to other services as ranked in the statutes.

Sec. 4.

Annuls the changes to the GRM regulations.

Sec. 5.

Allows the Act to be retroactive to the date the regulations went into effect.

Position Paper
CSSB 53 (FIN)

CSSB 53(FIN) would annul changes in regulations intended to limit use of government funding to pay for abortions that are not therapeutic. Specifically, the bill annuls changes in the regulations that specify that General Relief Medical is only available to women seeking "therapeutic abortions: and related services, annuls references to "elective abortions:" under 7 AAC 47,210 and 7 AAC 47,290 including subsections defining "elective abortions" and "therapeutic abortions."

The statement of intent calls for abortions to be eligible for funding under regulations in force in December of 1992. Unlike the original bill, CSSB 53(FIN) bars the administration from readopting the same regulations.

Position:

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

Recommended by: Kimberly B. Busch
Kimberly B. Busch
Director
Div. of Medical Assistance

Date: 3-9-93

Approved by: Theodore A. Mala
Theodore A. Mala, MD, MPH
Commissioner

Date: 3/10/93

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 53(FIN)

Revision Date: 08-Mar-93 Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regulations...relating to funding of abortion services... BRU: Medical Assistance Administration
 Sponsor: Senate HESS Committee Component: Claims Processing
 Requestor: _____ COMPONENT SERIAL NO. 00243

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE						
---------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

FUNDING	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts	(55.6)	(64.6)	(74.8)	(86.8)	(100.7)	(116.8)
1003 GF Match	(18.6)	(21.5)	(25.0)	(29.0)	(33.6)	(39.0)
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	(74.2)	(85.1)	(99.8)	(115.8)	(134.3)	(155.8)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Dave W. Williams Phone: 465-3355
 Division: Medical Assistance, DHSS Date: 3-8-93

Approved by Commissioner: Theodore A. Mala, MD, MPH Date: 3/10/93
 Agency: Department of Health & Social Services

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 For further distribution information call the Governor's Legislative Office

ANALYSIS (Cont.)
Medical Assistance
Claims Processing Component

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 53(FIN)

Revision Date: 08-Mar-93 Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regu- BRU: Assistance Payments
lations...relating to funding of abortion services... Component: AFDC
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00220

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

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

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

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

Phone: 465-3347
 Date: 3/8/93

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

Date: 3/10/93

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ANALYSIS (Cont.)

Aid to Families with Dependent Children

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

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

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

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

Revenue sources:

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

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

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 53(FIN)

Revision Date: 03/08/93 Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regulations...relating to funding of abortion services... BRU: Medical Assistance
 Component: Medical Non-Facility
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00229

Expenditures/Revenues:

(Thousands of Dollars)

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

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Dave W. Williams Phone: 465-3355
 Division: Medical Assistance, DHSS Date: 3-8-93

Approved by Commissioner: Theodore A. Mala, MD, MPH Date: 3/10/93
 Agency: Department of Health & Social Services

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ANALYSIS (Cont.)
Medical Assistance Administration, BRU
Medicaid Non-Facility Component

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 53(FIN)

Revision Date: 08-Mar-93 Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regu- BRU: Medical Assistance
lations...relating to funding of abortion services... Component: Medicaid Facility
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00230

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: (151.3)

ANALYSIS: (Attach a separate page if necessary)

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

This fiscal note is provided to show the estimated cost reduction associated with the proposed legislation. The FY 94 budget, however, does not include adjustments for these cost reductions. No assumption should be made that any actual "savings" will result from passage of the legislation.

Prepared by: Dave W. Williams
 Division: Medical Assistance, DHSS

Phone: 465-3355
 Date: 3-8-93

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

Date: 3/10/93

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ANALYSIS (Cont.)
Medical Assistance
Medicaid Facility Component

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 53(FIN)

Revision Date: 08-Mar-93 Dept. Affected: Health and Social Services
 Title: Annuling changes made by certain regu- BRU: Medical Assistance
lations...relating to funding of abortion services... Component: General Relief Medical
 Sponsor: Senate HESS Committee
 Requestor: _____ COMPONENT SERIAL NO. 00232

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	288.7	334.9	388.5	450.6	522.7	606.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	288.7	334.9	388.5	450.6	522.7	606.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by: Davis W. Williams DW / Kimberly Bence
 Division: Medical Assistance, DHSS

Phone: 465-3355
 Date: 3-8-93

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

Date: 3/10/93

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ANALYSIS (Cont.)

Medical Assistance Administration, BRU
General Relief Medical, Component

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

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

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

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

Released 7/24/92

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

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Juneau, Alaska 99801-2105

MEMORANDUM

July 22, 1992

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

TO: Senator Arliss Sturgulewski

FROM: Terri Lauterbach
Legislative Counsel

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

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

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

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

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

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

DISCUSSION

(1) Content of the proposed regulations.

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

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

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

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

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

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

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

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

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

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

(continued...)

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

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

(2) Effect of the proposed regulations.

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

^{3/}(...continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 47.25.300. DEFINITIONS. In AS 47.25.120 - 47.25.300

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Constitutionality of the proposed regulations - privacy.

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

^{23/} Op. Atty Gen., January 12, 1981, File No. J-66-413-81, at pages 5 - 6.

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

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

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

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

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

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

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

^{26/}(...continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

CORRECTION

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

Senator Arliss Sturgulewski
July 22, 1992
Page 15

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

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

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

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

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March 24, 1993

Representative Bill Hudson
Chair, House Labor & Commerce Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Re: Senate Bill 53, annulling abortion funding regulations

Dear Representative Hudson:

I have lived in Juneau for almost 11 years, and I am currently an attorney in private practice. I am also a supporter of and contributor to the Juneau Coalition for Pro-Choice, and in the past I have volunteered my legal services to that organization.

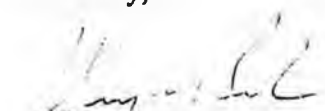
I have spent most of the past ten years, however, as an Assistant Attorney General and as a Deputy Commissioner of the Department of Commerce & Economic Development under Governor Cowper. In those capacities, I have testified in the legislature on literally hundreds of occasions. However, this is only the second time that I can remember testifying in my personal, rather than professional, capacity. This is because I feel particularly strongly about the issue at hand. I strongly encourage you and the Labor & Commerce Committee to move this bill, annulling Governor Hickel's regulations restricting abortion funding, from committee as quickly as possible. I also sincerely hope that you and your colleagues will not only pass this important piece of legislation, but will override the likely veto of Governor Hickel.

The recently adopted regulations cutting off public assistance funding for voluntary abortions are troublesome in several respects. First, I firmly believe that it is inappropriate for government to legislate morality, a belief which is supported by the privacy clause in Alaska's Constitution. I think it is obvious that any law designed to lower the number of abortions or to restrict one's access to an abortion is clearly an effort to legislate morality and should not be tolerated. Second, these particular regulations are particularly onerous because they discriminate against the poor. Although this discrimination may not be significant enough for a court to overturn them -- that is a question that may yet be decided by the Alaska Supreme Court -- it cannot reasonably be argued that these regulations are not discriminatory in fact. Quite simply, because of these regulations poor

women, and particularly those in Southeast who must incur transportation costs to Seattle or Anchorage to get an elective abortion, are less able to obtain an abortion than those who are better off. This is discrimination, pure and simple, and it is wrong. Finally, although government finances should not be a factor with respect to an issue of this magnitude, these regulations cannot even be justified as fiscally responsible.

Thank you for your consideration of this letter. I had hoped to testify in person today, but other responsibilities of my job prevented it. I hope you will not discount my testimony because it is in writing.

Sincerely,



Jeffrey W. Bush
Attorney

Audit Report

**DEPARTMENT OF HEALTH
AND SOCIAL SERVICES
DIVISION OF MEDICAL ASSISTANCE
SELECTED ABORTION ISSUES**

July 10, 1992



Audit Control Number:

06-4416-92

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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July 10, 1992

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAL ASSISTANCE SELECTED ABORTION ISSUES

July 10, 1992

Audit Control Number

06-4416-92

This audit addresses selected issues of concern relating to abortions funded through the Division of Medical Assistance. A major concern was whether DHSS is complying with Alaska Statutes and regulations relating to medical assistance payments for abortions. Accordingly, this review is not intended to be viewed as an exhaustive study of DHSS' public assistance eligibility systems or of legal issues surrounding state-funded abortions.

The audit was conducted in accordance with government auditing standards. Fieldwork procedures used in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

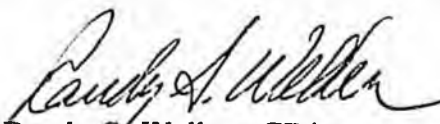

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have reviewed selected issues relating to abortions funded by the Department of Health and Social Services (DHSS), Division of Medical Assistance (DMA). A major concern was whether the DHSS is complying with Alaska Statutes and regulations relating to medical assistance payments for abortions.

The policy and audit approach used by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an agency's operation that have been identified as having a high degree of probability for needing improvement.

Therefore, by design, finite audit resources are used to identify where improvements can be made and little attention is devoted to reviewing efficient operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning. Since this review focused on specific concerns regarding state-funded abortions, it is not intended to be interpreted as an exhaustive study of DHSS' public assistance eligibility systems or of any legal issues surrounding state-funded abortions. In addition, it does not address any of the philosophical questions regarding abortions.

The objectives, scope and methodology of our review were as follows:

Objectives

The objectives of our audit were to:

1. Determine if DHSS is complying with Alaska Statutes and regulations relating to eligibility of women receiving abortions under state and federal programs,
2. Identify factors that have contributed to an increase in the number of state-funded abortions,
3. Develop and report selected abortion statistics relating to state-funded abortions for fiscal year 1989 through 1991.

Scope and Methodology

The primary concern centered around DHSS' eligibility procedures that relate to state-funded abortions paid for by DMA. We reviewed the quality control systems in place to ensure that only eligible recipients receive state-funded abortions. In addition, our review included data

regarding state-funded abortions for FY 89 through FY 91. It did not include abortions, if any, that would have been paid for by the Alaska Department of Corrections, through the state health insurance policies for women employed by the State or through expenditures to Indian Health Service organizations.

To address the objectives listed above, we obtained documentation from appropriate divisions within DHSS, the Department of Law, the Alan Guttmacher Institute, the Legislative Research Agency, First Health (a private corporation that is on contract as a fiscal intermediary), and from other sources as identified in this report. First Health operates an automated claims processing system for DMA that is certified by the Federal government as a Medicaid Management Information System. DMA annually, by fiscal year, summarizes abortion services by category of service. This internal document is created from a computer software program which reads the claims history file and counts number of recipients. It does not determine number of abortions (see Recommendation No.1). Because it is possible for a woman to have more than one abortion procedure in the reporting period (fiscal year), DMA medical staff agreed that in cases where abortion-related dates of service for a recipient differed by more than sixty-days, that it would be reasonable to conclude that another abortion had occurred. In addition, the DMA computer program selects elective-type¹ abortions as the criteria for reporting.

Since we were requested to report on all abortions performed, our methodology included identifying the universe as all abortions recorded (which included nonelective² abortions), and requested First Health to furnish us a computer file of all abortion procedure and diagnosis code transactions recorded during fiscal years 1989 through 1991. We developed our own software extraction programs to analyze and summarize the data using DHSS defined elective abortions in addition to total abortions recorded. For the purposes of this report, unless otherwise noted, the discussion on abortions will refer to those identified by DMA as elective abortions.

To administer the multitude of public assistance programs, DHSS has established an Eligibility Information System (EIS) to determine eligibility for public assistance recipients. The Quality Control Unit (QC) within the DHSS' Division of Public Assistance performs ongoing, federally mandated reviews of public assistance applications in order to establish the accuracy of the original determinations made by field eligibility technicians. After scrutinizing our extracted universe, we determined that 97% of recipients having abortions were covered within the QC program. Due to our review of the agency's QC in our annual statewide financial audit, where we have found that unit to be functioning in a reliable manner, and further analysis of the units favorable results which indicates that EIS has an accuracy rate of 99% in its eligibility determinations, we will not review recipients for appropriate eligibility factors.

¹ See page 21 for DMA's definition of Elective abortions.

² See Page 21 for definition of Nonelective abortions.

ORGANIZATION AND FUNCTION

The Department of Health and Social Services, Division of Medical Assistance (DMA) responsibilities include administering the Medicaid and the General Relief Medical (GRM) assistance programs. These programs are designed to provide access to health care for eligible low income Alaskans.

Under Alaska Statutes, per AS 47.07.010, the Alaska Legislature has authorized DHSS to participate in the national medical assistance program referred to as the Medicaid program (42 USC 1396-1396p; Title XIX, Social Security Act). The Alaska Administrative Code, per 7 AAC 43.140, stipulates that

- (A) *Payment for abortions may be covered under medicaid when the physician services invoice is accompanied by certification that one of the following conditions exist:*
- (1) *the life of the mother would be endangered if the pregnancy were carried to term;*
 - (2) *severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term; or*
 - (3) *pregnancy is the result of rape or incest.*
- (B) *Procedures which are not covered under this section will be covered under General Relief Medical, Alaska Administrative Code, per 7 AAC 47.*

It should be noted that federal financial participation is not available for expenditures relating to items (2) and (3) listed above. Federal laws (42 CFR 441.203) specify that only when the life of the mother is endangered will they participate in abortion expenditures (see Recommendation No. 3).

The General Relief Medical program is a state-funded assistance program which provides care for those needy Alaskans who do not qualify under the Medicaid program.

AS 47.25.195 authorizes DHSS to make payments to a health facility for the treatment of a needy resident of the State who is not eligible for aid from another public agency or department providing similar services in the State. In addition, 7 AAC 47.210 (7) allows the department to make payments for expenses that are pregnancy-related services necessary for an abortion.

AS 18.16.010 prohibits abortions unless they are performed in a DHSS approved facility; prior parental consent has been obtained for unmarried women less than 18 years of age; and the woman is domiciled or physically present in the State 30 days before the abortion. These

requirements have not been enforced as a result of several United States Supreme Court decisions. In *Roe v. Wade*, 401 U.S. 113 (1973), the court struck down a Texas law and held that the right of privacy protected by the fourteenth amendment to the U.S. Constitution encompasses a woman's decision whether or not to terminate her pregnancy. The court held that in the first trimester of a woman's pregnancy there is no state interest in regulating abortions which is compelling, and can be sustained (see Recommendation No. 3).

On June 29, 1992 the United States Supreme Court reaffirmed the recognition of a woman's right to terminate her pregnancy before fetal viability but did decide that the states could impose some restrictive requirements (*Casey v. Planned Parenthood of Southeastern Pennsylvania*). Subsequent to this ruling, Governor Hickel has directed DHSS to revise the agency's regulations so that only abortions deemed "therapeutic" would be paid by state money.

BACKGROUND INFORMATION

State Funding of Abortions

Elective abortions have been covered under the Department of Health and Social Services' (DHSS) General Relief Medical (GRM) program since 1970 when the Alaska Legislature overturned an executive veto of a bill which removed most criminal sanctions in this area. Though financial assistance for elective abortions is not specifically addressed by statute, the Attorney General (AG) has opined that DHSS has sufficient powers under Alaska Statutes per AS 47.25, that present no legal problems in establishing administrative regulations that provide financial assistance for abortions to the needy.

Subsequent to *Roe v. Wade* in 1973, additional AG opinions have reaffirmed that because of the Supreme Court ruling and the Alaska Constitution, which is even more specific than the U.S. Constitution regarding right of privacy, any attempt to regulate the prohibition of state funding for abortions for needy women would be subject to legal attack on equal protection grounds. Consequently, those prohibitions cited in AS 18.16.010 have not been challenged in court largely because they have not been enforced. With the exception of renumbering, the Alaska Legislature has made no substantive changes to that law since 1970. To date, there have been no court cases in Alaska directly pertaining to abortion rights and public funding issues.

Public Sentiment

The people in Alaska continue to send mixed signals regarding their opinions on state-funded abortions. In 1982 an anti-abortion initiative was placed on the ballot but defeated by a vote of 113,005 to 77,829. A current newspaper article referenced an Alaska pollster who claims that in the ten years he has been tracking this issue, Alaskans have shown little change in their attitudes toward favoring a woman's right to choose. However, when Alaskans are surveyed on whether the State should pay for abortions for the needy, Alaska pollsters disagree on whether those surveyed are in favor or opposed to state-funded abortions.

No Federal Funding

Federal funding, to some extent, became available for elective abortions in 1972 when Alaska enrolled in the Medicaid program. As a result of the Hyde Amendment adopted by Congress in 1976, congressional restriction on the use of federal funds has been nearly eliminated for abortions. Since 1981, federal funds have been available for abortions only when a pregnant woman's life would be endangered if she carried the pregnancy to term.

Elective Abortions Reported

The number of state-funded elective abortions reported by DMA has increased approximately four-fold from 1983 to 1991. Refer to Exhibit I. As discussed further in subsequent sections of this report, DMA does not have a management information system that can provide the causes for increases from year to year. As detailed in Recommendation No. 2, major expansions in state and federal public assistance programs has significantly enlarged those eligible for abortions through the state-funded GRM program. No doubt, at least in recent years, this has contributed to the rise in the number of abortions funded by the State.

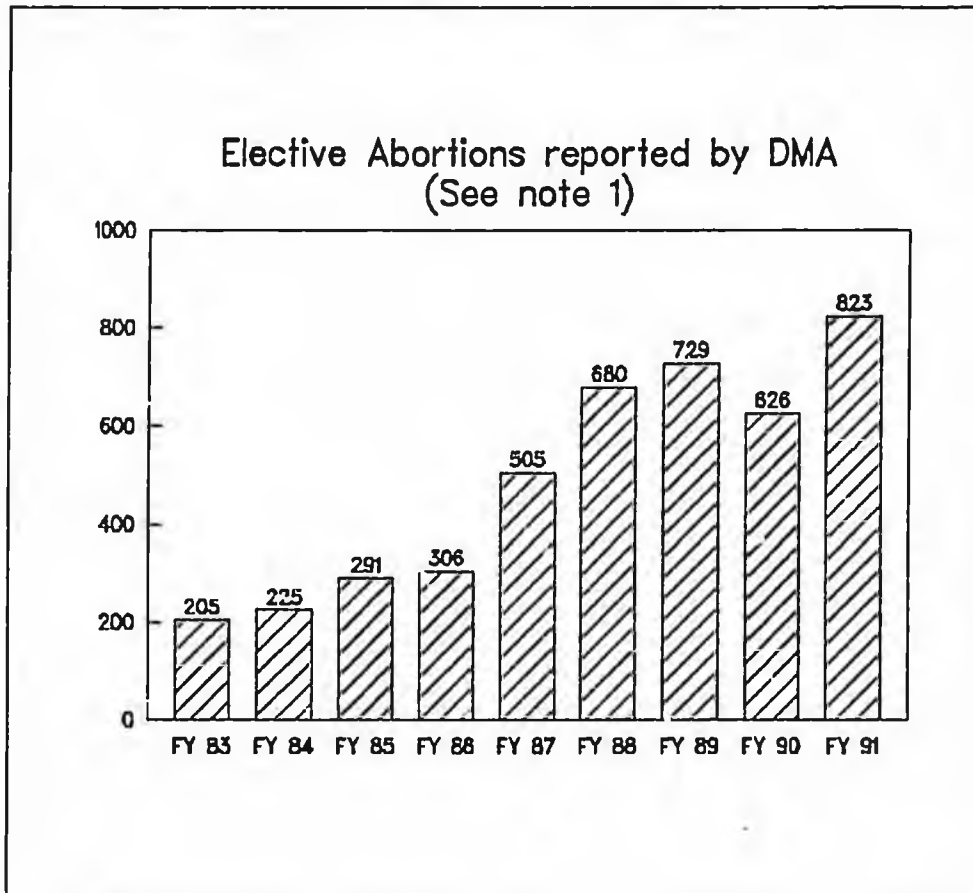


Exhibit I

Note 1: DMA reported number of recipients rather than number of abortions. Refer to Exhibit II for formulated count of abortions for FY 89 - FY 91.

Source: Department of Health and Social Services, Division of Medical Assistance records.

REPORT CONCLUSIONS

At the direction of the Legislative Budget and Audit Committee, our objective was to determine if the Department of Health and Social Services (DHSS) and their Division of Medical Assistance (DMA) has complied with Alaska laws in administering those programs that fund abortions. As discussed in the background information of this report, the specific authority for paying for abortions is not derived from statute but rather from regulation. Further attorney general opinions have determined that certain provisions in Alaska Statutes, per AS 18.16.010, are too restrictive in light of the *Roe v. Wade* decision. Consequently, these statutes have not been enforced. Notwithstanding the above, we have concluded that DHSS is complying with relevant statutes to the extent that compliance is legally enforceable. However, DHSS has not sought regulatory change to reflect the practice of qualifying women for elective abortions under the General Relief Medical (GRM) program.

Currently it is DMA's practice to qualify pregnant women for Medicaid assistance under the less restrictive joint federal/state programs. As discussed in the inset at right, in recent years these eligibility criteria have been made gradually less restrictive.

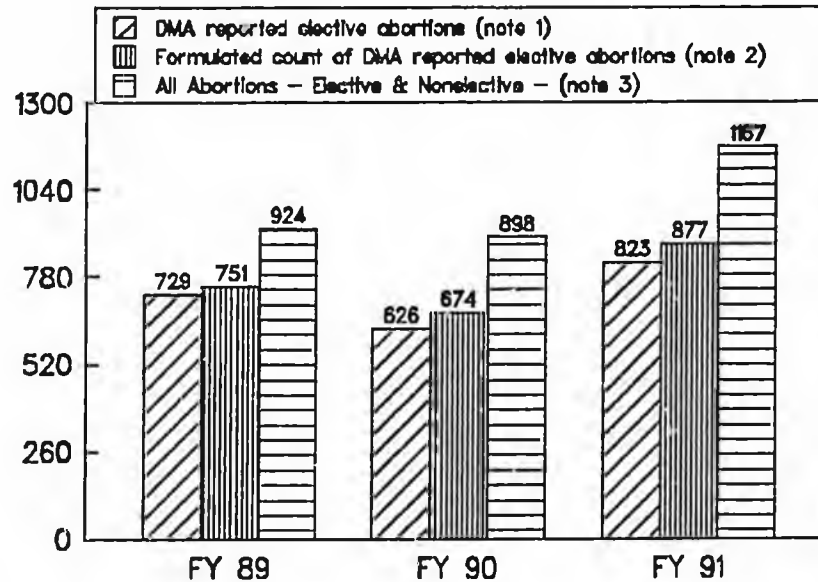
Once pregnant women are deemed eligible under the Medicaid program they can receive abortion services under the State's GRM program, whose financial eligibility factors are otherwise more stringent. The disparity between defined standards of recipient need are widening for the respective programs.

A policy question must be addressed whether the state-funded GRM program was intended for those who would not fit the department regulatory definition of "needy". Evidence that the current trend of the federal government to use the Medicaid program as a vehicle to address family health and reduce the infant mortality rate raises public policy questions as to whether DHSS should be qualifying those who choose an elective abortion under the federal program eligibility criteria (see Recommendation No. 2).

We were also directed to determine if we could identify causes for the rise in the number of abortions in recent years. As discussed in Recommendation No. 1 of this report, the current management information system at DMA does not provide adequate information to allow us to identify possible factors behind the rise in state-funded abortions. However, it did appear to us that changes in eligibility criteria for Federal Public Assistance programs may be a crucial factor in the increase in state-funded abortions.

Since the mid-1980's, the U.S. congress has eased eligibility requirements for pregnant women to participate in federal public assistance programs. Some public policy analysts point to this trend as Congress's attempt to break the link between Medicaid's traditional role of providing services only to welfare recipients. In the view of DMA officials, federal policy makers are using the Medicaid program as a medium to expand national health coverage, especially for children and pregnant women. DHSS's public assistance division recently published statistics that indicated for the twelve months ending March 1992, the "Medicaid only" cases have increased 41% from the prior year.

Abortion Count (by Date of Service)



Qualifications: The attending physician and medical facility is responsible for the proper identification of procedures performed. DMA indicates that timing differences and inconsistent industry coding may distort these statistics.

Note 1: DMA inadvertently interpreted total number of recipients receiving abortions as total number of abortions.

Note 2: DMA does not compute the number of abortive procedures a recipient may receive during a particular fiscal year. DMA medical staff agreed that when dates of service differed by more than 60 days it would be reasonable to conclude that another abortion had occurred.

Note 3: DMA does not account for nonelective abortions. The Division of Legislative Audit included additional relevant procedure codes to determine nonelective abortion statistics.

Exhibit II

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Health and Social Services (DHSS), Division of Medical Assistance (DMA) should modify present reporting procedures for state-funded abortions that would accurately and consistently account for the total number of abortions reported as well as the associated costs.

DMA extracts the number of abortions reported each fiscal year from the Medicaid Management Information System. Abortion procedures are summarized by recipient. DMA does not take into consideration the possibility of a recipient having more than one abortion in a fiscal year. In addition, the associated medical expenses reported do not include laboratory, pharmaceutical, ancillary, transportation or other charges that have not been coded with a medical industry abortion diagnostic or procedure code.

Heightened public awareness surrounding the sensitive abortion issue and the ongoing demand for relevant information about state-funded abortions make it important that DHSS be able to provide timely and accurate statistics to the public upon request. As discussed below, present statistics being reported are misleading. Expenditures are not accurate and statistical population trends and cost averages are not correct.

As mentioned earlier in our audit methodology, we accessed DMA's data base in order to summarize files by medical industry abortion procedure and diagnostic codes for fiscal years 1989 through 1991. As noted in Exhibit II, our count of elective abortions somewhat mirrored those reported by DMA. We believe the minor differences noted annually resulted from DMA's system of only counting number of recipients while not addressing the possibility of a recipient having more than one abortion each year. As illustrated, nonelective abortions made up approximately 23% to 33% of all elective and nonelective abortions reported.

An anomaly became apparent during our trend analyses of various program attributes. For the first time since 1983 (see Exhibit I), DMA reported a decrease in 1990 in the number of elective abortions reported from the prior year. In addition, our analysis of the data base indicated that there was a slight decrease in total abortions recorded (see Exhibit II). This trend conflicts with other DMA statistics which indicate that the number of recipients eligible for Medicaid services under the State plan have continued to increase. Since their existing system does not track statistical changes, DMA was unable to explain the reasons for the reduction. Though there could be other reasons for this reduction, we suspect the lack of a reliable tracking system which does not consistently collect all related data could be causing some trend distortions.

Another aberration that remains unexplained is DMA's statistics that indicate the average costs for elective abortion procedures have been decreasing since at least 1983. As noted

in Exhibit III³, DMA has been reporting number of elective abortions and associated costs by fiscal year. As noted, these statistics are not accurate or complete. When computing the average cost per procedure, the average cost has decreased approximately 50% from 1983 to 1991. With medical costs rising (average inflation rate in just the last five years has been reported at 20% for each of those years)⁴, the trend of decreased average costs appears to conflict with the spiraling inflation taking place in the health care industry. One plausible explanation that could support decreasing costs of abortions include some evidence that, at least in the last three years, there has been an increase in the number of abortions performed out of state where medical costs are less expensive (see Table 1 in the statistical table section of this report). Another reason could be the trend in recent years of Alaska hospitals discontinuing abortion services. This results in more abortions being performed at health clinics where costs are usually less expensive. However, the system that collects this data is not consistently reporting all associated costs by proper fiscal year.

Program information relating to abortions is difficult to monitor due to the constantly changing federal programs that continue to affect that portion of the population eligible for medicaid health services. In addition, the medical industry changes their coding system periodically which would make it arduous for DHSS to compile consistent trends.

We understand that the abortion program within DMA makes up an insignificant part of their health service mandate. However, from a public policy perspective, with the intense level of interest and concern that is ever present regarding the abortion issue, we feel that the reporting system should be modified to accurately and consistently account for state-funded abortion procedures.

³ See Page 11 for Exhibit III.

⁴ State of Alaska Health Care Cost Containment Task Force Report to the Seventeenth Legislature - 1991.

Computed Average Costs of Elective Abortions

Fiscal Year	Number of Abortions (Note 2)	State Expenditures (Note 1)	Average Cost
83	205	\$217,263	\$1,060
84	225	\$210,849	\$937
85	291	\$186,495	\$641
86	306	\$235,172	\$769
87	505	\$344,886	\$693
88	680	\$407,615	\$599
89	729	\$423,111	\$580
90	626	\$370,508	\$501
91	823	\$415,540	\$504

Source: Department of Health and Social Services, Division of Medical Assistance records.

Note 1: Based upon our review of DMA's current accounting and reporting system, the expenditures do not represent all costs associated with the number of abortions being reported.

Note 2: DMA inadvertently interpreted total number of recipients as total number of abortions. Formulated number of abortions are higher (see Exhibit II).

Exhibit III

Recommendation No. 2

DHSS should clarify through the regulatory process current practices of funding abortions through the General Relief Medical (GRM) program.

Historically DMA has funded abortion procedures through the state-funded GRM program. This program, as defined in Alaska Statutes, per AS 47.25.120 - 300, authorizes DHSS to provide financial assistance to a "needy" person who is eligible under the regulations of the department. Through the Alaska Administrative Code, per 7 AAC 47.140-160, DHSS has further defined a person in need by establishing income standards (using a variable formula based on household size) and prior and personal resource limits to determine GRM eligibility. For example, current regulations provide that a family of three is not financially eligible for assistance unless monthly net income is below \$500 a month and personal resources do not exceed \$500. GRM is considered to be a program of last resources for providing medical care for needy persons.

Congressional expansion of eligibility for the Medicaid program has been evolving since approximately 1984 for pregnant women. This expansion of eligibility includes ongoing elevation of the income standards above the federal poverty level and the eventual discontinuance of any personal resource requirements. States are now required to provide Medicaid coverage to pregnant women with incomes up to 133% of the federal poverty level. Currently there is no resource requirement for coverage of pregnant women in Alaska. This equates to a needs standard of \$1,602 per month for a family of three without regard to personal resources.

The federal trend of relaxed eligibility requirements for pregnant women supports the viewpoint that congress has begun to separate the medicaid program from its traditional role of providing medical services only to welfare recipients. DMA has reported that federal policy makers are using the Medicaid program as a medium to expand national health coverage, especially for children and pregnant women.

DMA's current administrative procedures include qualifying pregnant women under less stringent federal/state public assistance programs. Once determined eligible for assistance, a recipient that chooses a non-federally-funded abortion is not required to requalify under the more restrictive GRM program which funds the related medical expenses.

Evidence that the current trend of the federal government to use the Medicaid program as a vehicle to enhance family health care for needy people and reduce the infant mortality rate in this country by relaxing the eligibility requirements, raises public policy questions in regard to the DHSS practice of qualifying those seeking elective abortions under the federal programs. In addition, the dispersion of income and resource requirements between the GRM and Medicaid programs should raise policy questions of whether the State GRM program was intended to fund abortions for those who may not qualify under the GRM regulatory definition of a "needy" person.

On July 8, 1992, DHSS proposed amendments to regulations that would eliminate reimbursement under the GRM program for an elective, nontherapeutic abortion. However, regulations proposed do not address our concerns regarding the lack of regulatory support of funding abortions for those who may not qualify under the financial eligibility standards established for the GRM program.

Recommendation No. 3

In light of U.S. Supreme Court rulings, DHSS, with assistance from the Attorney General, should initiate action to amend AS 18.16.010; parts of which have been determined unconstitutional by the Attorney General. In addition, Alaska Administrative Code, per 7 AAC 43.140 should be amended to reflect changes in federal law.

AS 18.16.010, in part, prohibits abortions unless they are performed in a hospital or DHSS approved facility, prior parental consent has been obtained for unmarried women less than 18 years of age, and women are domiciled or physically present in the State 30 days before the abortion. These statutory restrictions have not been enforced as a result of various U.S. Supreme Court rulings, including *Roe v. Wade* (1973). The Alaska Attorney General, through several opinions starting in 1974, has opined that these provisions are unconstitutional.

Under AS 47.07.010 the Alaska Legislature has authorized DHSS to participate in the federal Medicaid program. In 1979, the department adopted conditions under which the Medicaid program would pay for an abortion. Per 7 AAC 43.140, they included life endangerment; severe and long-lasting physical health damage; or when the pregnancy was a result of rape or incest. Current federal law only allows Medicaid participation for an abortion when a physician determines that the life of the mother would be endangered if the fetus was carried to term.

Due to court decisions and changes in federal law, we recommend that DHSS work with the Attorney General to amend those laws and administrative regulations that are no longer valid. Portions of this recommendation were made in a special audit published by us in 1980 entitled *A Special Review of the Department of Health and Social Services, Division of Public Assistance, Medical Assistance Payments for Abortions (January 1, 1977 - June 30, 1979)*.

On July 8, 1992, DHSS proposed changes in regulations that would amend 7 AAC 43.140 to reflect the federal regulation that limits Medicaid coverage to circumstances in which carrying the pregnancy to term would endanger the mother's life.

SELECTED ABORTION STATISTICS

The following tables summarize selected elective and nonelective abortion statistics for FY 89 through FY 91 by date of service. The total number of abortions and the expenditures reported in the following tables were extracted from the Department of Health and Social Services' (DHSS) Medicaid Management Information System. They include only those statistics coded with medical industry abortion diagnosis and procedure codes. They do not include ancillary and other related costs. In addition, expenditures do not reconcile to reported departmental costs because the Division of Medical Assistance duplicated certain costs.

Regions and Districts identified in the tables conform to DHSS, Division of Public Assistance definitions.

Table 1 - In State / Out of State by Fiscal Year

Elective Abortions

FY 89			FY 90		FY 91		TOTAL ALL FY'S	
Location	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Unknown	5	\$1,847.97	4	\$2,261.25	-	-	9	\$4,109.22
In State	734	\$426,516.97	616	\$320,736.10	801	\$350,634.33	2151	\$1,097,887.40
Out of State	12	\$5,283.08	54	\$20,501.60	76	\$29,427.02	142	\$5,211.70
TOTAL	751	\$433,648.02	674	\$343,498.95	877	\$380,061.35	2302	\$1,157,208.32

All Abortions - Elective and Nonelective

FY 89			FY 90		FY 91		TOTAL ALL	
Location	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Unknown	5	\$1,847.97	4	\$2,261.25	-	-	9	\$4,109.22
In State	907	\$607,850.99	840	\$609,522.20	1089	\$736,659.96	2836	\$1,954,033.15
Out of State	12	\$5,283.08	54	\$20,566.60	78	\$30,521.19	144	\$56,370.87
TOTAL	924	\$614,982.04	898	\$632,350.05	1167	\$767,181.15	2980	\$2,014,513.24

Table 2 - Recipient Age by Fiscal Year

Elective Abortions

FY 89			FY 90		FY 91		TOTAL ALL FY'S	
Age	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Less than 13	1	\$80.00	2	\$311.25	-	-	3	\$391.25
13 - 16	35	\$18,275.21	42	\$19,791.77	40	\$18,915.55	117	\$56,982.53
17 - 21	245	\$153,790.71	215	\$111,730.40	299	\$129,767.86	759	\$395,288.97
22 - 30	371	\$202,533.12	304	\$154,935.98	431	\$182,420.55	1106	\$539,889.65
Over 30	99	\$58,968.98	111	\$56,729.55	107	\$48,957.39	317	\$164,655.92
TOTAL	751	\$433,648.02	674	\$343,498.95	877	\$380,061.35	2302	\$1,157,208.32

All Abortions - Elective and Nonelective

FY 89			FY 90		FY 91		TOTAL ALL FY'S	
Age	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Less than 13	1	\$80.00	4	\$751.25	4	\$226.00	9	\$1,057.25
13 - 16	43	\$21,289.38	46	\$29,411.59	52	\$24,112.04	141	\$74,813.01
17 - 21	282	\$187,633.42	262	\$162,775.12	368	\$241,507.61	912	\$591,916.15
22 - 30	440	\$294,842.31	410	\$324,962.00	559	\$370,487.49	1409	\$990,291.80
Over 30	158	\$111,136.93	176	\$114,450.09	184	\$130,848.01	518	\$356,435.03
TOTAL	924	\$614,982.04	898	\$632,350.05	1167	\$767,181.15	2989	\$2,014,513.24

Table 3 - Race by Fiscal Year

Elective Abortions

Race	FY 89		FY 90		FY 91		TOTAL ALL FY'S	
	Count	Amount	Count	Amount	Count	Amount	Count	Amount
White	380	\$218,524.87	337	\$180,050.99	423	\$182,077.91	1140	\$580,653.77
AK Native	219	\$140,485.22	221	\$117,174.01	284	\$130,015.45	724	\$387,674.68
Black	103	\$52,588.92	76	\$24,450.81	111	\$40,025.33	290	\$117,065.06
Hispanic	12	\$4,226.00	14	\$5,506.26	21	\$14,070.60	47	\$23,802.86
Other	37	\$17,823.01	26	\$16,316.88	38	\$13,872.04	101	\$48,011.93
Total	751	\$433,648.02	674	\$343,498.95	877	\$380,061.33	2302	\$1,157,208.30

All Abortions - Elective and Nonelective

Race	FY 89		FY 90		FY 91		TOTAL ALL FY'S	
	Count	Amount	Count	Amount	Count	Amount	Count	Amount
White	500	\$349,354.77	502	\$365,413.63	630	\$473,945.62	1632	\$1,188,714.02
AK Native	246	\$164,201.23	243	\$145,038.17	324	\$170,783.76	813	\$480,023.16
Black	123	\$71,422.11	100	\$72,373.77	133	\$63,485.01	356	\$207,280.89
Hispanic	16	\$7,512.26	19	\$16,184.36	30	\$29,460.77	65	\$53,157.39
Other	39	\$22,491.67	34	\$33,340.12	50	\$29,505.99	123	\$85,337.78
Total	924	\$614,982.04	898	\$632,350.05	1167	\$767,181.15	2989	\$2,014,513.24

Note 1: Other consists of American Indian, Asian, Pacific Islander and Unknown.

Table 4 - Recipient Region by Fiscal Year

Elective Abortions

FY 89			FY 90		FY 91		TOTAL ALL FY'S	
Region	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Anchorage	384	\$181,392.84	342	\$113,413.06	464	\$163,930.50	1190	\$458,736.40
Kotzebue	14	\$6,487.29	13	\$3,270.19	13	\$6,011.09	40	\$15,768.57
Nome	7	\$3,371.02	2	\$768.87	3	\$900.00	12	\$5,039.89
Northern	117	\$53,214.17	92	\$39,338.50	145	\$65,946.72	354	\$158,499.39
Southcentral	123	\$54,723.24	120	\$46,385.01	125	\$52,913.74	368	\$154,021.99
Southeast	84	\$124,277.96	89	\$135,349.18	110	\$84,996.72	283	\$344,623.86
Southwest	22	\$10,181.50	16	\$4,974.14	17	\$5,362.58	55	\$20,518.22
Total	751	\$433,548.02	674	\$343,498.95	877	\$380,061.35	2302	\$1,157,208.32

All Abortions - Elective and Nonelective

FY 89			FY 90		FY 91		TOTAL ALL FY'S	
Region	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Anchorage	460	\$265,090.05	439	\$242,209.96	575	\$330,389.50	1474	\$837,689.51
Kotzebue	13	\$6,487.29	13	\$3,710.19	13	\$6,291.09	39	\$16,488.57
Nome	7	\$3,611.02	2	\$808.87	3	\$980.00	12	\$5,399.89
Northern	156	\$97,320.60	132	\$86,022.20	219	\$126,041.85	507	\$309,384.65
Southcentral	165	\$90,738.51	183	\$132,572.03	205	\$172,805.97	553	\$396,116.51
Southeast	100	\$140,813.07	111	\$160,932.66	135	\$124,870.16	346	\$426,615.89
Southwest	23	\$10,921.50	18	\$6,094.14	17	\$5,802.58	58	\$22,818.22
Total	924	\$614,982.04	898	\$632,350.05	1167	\$767,181.15	2989	\$2,014,513.24

Table 5A - Recipient District by Fiscal Year

Elective Abortions

FY 89			FY 90		FY 91		TOTAL ALL FY'S	
Region	Count	Amount	Count	Amount	Count	Amount	Count	Amount
Southeast	-	-	1	\$2,262.94	6	\$4,102.55	7	\$6,365.49
Juneau	39	\$66,039.48	45	\$66,571.88	52	\$36,765.73	136	\$169,377.09
Sitka	17	\$16,638.15	14	\$17,095.38	13	\$12,326.65	44	\$46,060.18
Ketchikan	28	\$41,600.33	29	\$49,418.98	39	\$31,801.79	96	\$122,821.10
Northern	93	\$43,073.16	78	\$33,738.50	126	\$56,725.35	297	\$133,537.01
Fort Yukon	2	\$945.00	2	\$750.00	2	\$1,150.00	6	\$2,845.00
Fairbanks	22	\$9,196.01	12	\$4,850.00	17	\$8,071.37	51	\$22,117.38
Nome	7	\$3,371.02	2	\$768.87	3	\$900.00	12	\$5,039.89
Kotzebue	14	\$6,487.29	13	\$3,270.19	13	\$6,011.09	40	\$15,768.57
Bethel	22	\$10,181.50	16	\$4,974.14	17	\$5,362.58	55	\$20,518.22
Kenai	33	\$13,666.59	41	\$20,048.41	43	\$18,865.35	117	\$52,580.35
Wasilla	63	\$25,565.98	56	\$16,696.09	63	\$27,024.19	182	\$69,286.26
Southcentral / Northwest	4	\$1,223.11	6	\$1,559.73	3	\$1,574.06	13	\$4,356.90
Southcentral	23	\$14,267.56	17	\$8,080.78	16	\$7,450.14	56	\$27,798.48
Anchorage - Gambell	12	\$5,126.66	12	\$4,056.30	15	\$4,202.12	39	\$13,385.08
Anchorage - Muldoon	372	\$176,266.18	330	\$109,356.76	449	\$159,723.38	1151	\$445,351.32
Total	751	\$433,648.02	674	\$343,498.95	877	\$380,061.35	2302	\$1,157,208.32