

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

PLANNED PARENTHOOD OF)	
THE GREAT NORTHWEST,)	
)	
Plaintiff.)	
v.)	
)	
WILLIAM J. STREUR,)	
COMMISSIONER OF THE)	
DEPARTMENT OF HEALTH AND)	
SOCIAL SERVICES, AND)	
STATE OF ALASKA DEPARTMENT)	
OF HEALTH AND SOCIAL SERVICES,)	
)	
Defendants.)	
)	

COPY
Original Received
JAN 29 2014
Clerk of the Trial Courts

Case No. 3AN-14-711 CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the validity of a regulation recently adopted by the Alaska Department of Health and Social Services, and scheduled to take effect on February 2, 2014 (hereinafter “the Regulation”). The Regulation severely restricts the circumstances under which Alaska will pay for medically necessary abortions for women who rely on the Medicaid program for their health care. This restriction violates the Alaska Constitution and the Alaska Administrative Procedure Act, and if not enjoined will have significant and irreversible consequences for Medicaid-eligible Alaska women. A copy of the Regulation (7

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AAC 160.900(d)(30)), and the “Certificate to Request Funds for Abortion” are attached as Exhibit A.

2. Alaska has a comprehensive scheme of medical coverage for its low-income residents. Through its medical assistance program, Alaska Medicaid, the State provides funding for all covered services, including abortion, when those services are determined by a physician to be “medically necessary.”

3. The Regulation will change that by imposing a narrow definition of “medically necessary” only for abortion services, thus taking away a doctor’s ability to use his or her judgment about what constitutes a “medically necessary” abortion. Specifically, the Regulation requires physicians seeking reimbursement from Medicaid to sign a certificate attesting that an abortion is “medically necessary to avoid a threat of serious risk to the physical health of the woman from continuation of her pregnancy due to the impairment of a major bodily function,” and to identify one of an enumerated list of health conditions or a similar condition severe enough to satisfy this standard.

4. The State of Alaska has a long history of attempting to improperly restrict Medicaid coverage of abortions, in spite of the fact that the Alaska Supreme Court has held that, in order to meet the requirements of the State’s equal protection guarantee, the Alaska Medicaid program must cover medically necessary abortions under the same terms as it does for other services. *State, Dep’t of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 913 (Alaska 2001).

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5. The Regulation harms women in Alaska who are otherwise eligible for medical assistance by denying coverage for abortion even when an abortion is medically necessary in the judgment of a physician. The women impacted by the Regulation are, by definition low-income, and for many of them, the denial of funding for an abortion is tantamount to a total ban.

6. The denial of coverage for abortions that do not meet the demanding criteria of the Regulation will burden the right of reproductive choice of low-income women, in violation of the Alaska Constitution. In addition, the Regulation was promulgated in violation of the Administrative Procedure Act.

7. The Regulation should therefore be declared unconstitutional and in violation of state law and its enforcement enjoined.

JURISDICTION

8. This is a complaint for declaratory and injunctive relief brought pursuant to AS 09.40.230 and AS 22.10.020 and AS 44.62.300. This court has jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015 and AS 22.10.020.

PARTIES

9. Plaintiff Planned Parenthood of the Great Northwest (“Planned Parenthood”) is a not-for-profit organization that provides reproductive health care services and sexual education programs in Alaska, Idaho, and western Washington. Its reproductive health care services include: abortions; pregnancy testing; birth control; sexually-transmitted disease testing; emergency contraception; pap tests; breast cancer screenings; HIV testing; treatments to prevent cervical cancer; blood testing; and referrals for appropriate medical or social services. In Alaska, Planned Parenthood provides abortions up to 13 weeks of pregnancy as measured from the first day of the woman’s last menstrual period (“lmp”). In Seattle, Planned Parenthood provides abortions to patients, including Alaskan women, up to 18 weeks lmp. Planned Parenthood participates in the Alaska Medicaid program and receives reimbursement for medically necessary abortions provided to eligible Medicaid participants. Planned Parenthood sues on its own behalf, and on behalf of its Medicaid patients seeking medically necessary abortions.

10. Defendant William J. Streur, Commissioner of the Department of Health and Social Services (“the Department”), is the principal executive officer of the Department. Commissioner Streur is sued in his official capacity.

11. Defendant State of Alaska, Department of Health and Social Services, administers public assistance programs, including the State Medicaid program, for low-income Alaska residents.

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FACTUAL ALLEGATIONS

Statutory and Regulatory Background

12. Alaska provides general medical assistance to low-income residents through its Medicaid Program, a cooperative federal-state funded program. AS 47.07.010 *et seq.* By order of the Alaska Supreme Court in *Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001), Alaska uses state funds to pay for medically necessary abortions for eligible women.

13. In establishing the Medicaid program, the Legislature is discharging its constitutional duty, under Article 7, section 4 of the Alaska Constitution, to promote and protect public health.

14. The Alaska Legislature, in adopting the Medicaid program, has “declared . . . as a matter of public concern that the needy persons of this state who are eligible for medical care at public expense under this chapter should seek only uniform and high quality care that is appropriate to their condition and cost-effective to the state” AS 47.07.010.

15. To “assure that the medical and remedial care and services are of high quality,” the State Medicaid Plan provides that “the entire range of medical services which are included in the plan will be available as determined necessary by qualified physicians and other practitioners The decision to provide medical care will always be made by a qualified physician or other practitioner.” State of Alaska, State Plan Under Title XIX of the Social Security Act: Medical Assistance, at Attach. 3.1-C, *available at*

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[http://DHHS.alaska.gov/Commissioner/Documents/medicaidstateplan/PDF_SP/SP_pgs/SP_a
tt3.1c.pdf](http://DHHS.alaska.gov/Commissioner/Documents/medicaidstateplan/PDF_SP/SP_pgs/SP_a
tt3.1c.pdf) (last visited Jan. 25, 2014).

16. In addition, regulations adopted by the Department require that services must be “medically necessary as determined by criteria established under 7 AAC 105 - 7 AAC 160 or by the standards of practice applicable to the provider.” 7 AAC 105.100(5). The referenced regulations do not further define “medically necessary.”

17. The statute describing the duties of the Department in administering welfare and other assistance programs, including Medicaid, authorizes the Department to adopt rules “establishing standards for determining the amount of assistance that an eligible person is entitled to receive” and specifies that “the amount of the assistance is sufficient when . . . it provides the individual with a reasonable subsistence compatible with health and well-being.” AS 47.05.010(9).

Public Assistance for Medically Necessary Abortions

18. The State of Alaska has provided funding for abortions for low-income women through the Medicaid program even after Congress restricted federal funding, beginning in the mid-1970’s, when it first adopted the Hyde Amendment. Versions of that amendment have been enacted ever since, and today federal funding is only available for women enrolled in Medicaid if the pregnancy results from rape or incest or if the abortion is necessary to save the woman’s life.

19. In the wake of the Hyde Amendment, the Alaska General Relief Management (GRM) program, which was funded solely with state money, took over paying for abortion services for women who were eligible for Medicaid.

20. In 1993, the Department adopted a new regulation that limited GRM funding for “therapeutic” or “medically necessary” abortions (the terms are used interchangeably). Under this regulation, a therapeutic abortion was defined as one “certified by a physician as medically necessary to prevent the death or disability of the woman, or to ameliorate a condition harmful to the woman’s physical or psychological health.” 7 AAC 47.290(8).

21. A legal challenge to the 1993 regulation on equal protection, due process, and vagueness grounds resulted in a stipulation and a settlement agreement, which were approved by a superior court order entered April 21, 1994 (hereinafter and collectively referred to as “the Agreement”) delineating the process for billing Medicaid for abortion services. The Agreement makes clear that a separate certification requirement, unique to abortion providers, is not permitted. The Agreement explicitly states, “just as in most other procedures for which state funding is provided, the physician must send his or her bill, with the appropriate procedure codes indicated, to the state, in order to receive payment.” In addition, “payments for services relating to abortion will continue to be paid by the Department according to the regulations *upon receipt of the routine bill*” The Agreement further makes clear that “the treating physician’s professional judgment is

sufficient for payment.” For the nearly 20 years since this Agreement, Planned Parenthood’s physicians have followed these procedures when submitting claims for payment.

22. In 1998, the Alaska Legislature defunded the State’s GRM Program. In its place, the Legislature created a new program that provided the same medical services formerly provided under the GRM, with the sole exception that abortion was no longer covered.

23. A superior court ruled that the new medical assistance scheme violated the constitutional right to privacy of Medicaid patients. Despite this ruling, the State refused to resume coverage for medically necessary abortions, resulting in a subsequent order stating that: “For purpose of this Order, the terms medically necessary abortions or therapeutic abortions are used interchangeably to refer to those abortions . . . necessary . . . to ameliorate a condition harmful to the women’s physical or psychological health, as determined by the treating physician performing the abortion services in his or her professional judgment.”

24. The Alaska Supreme Court affirmed the superior court’s decision, holding that the State’s refusal to fund medically necessary abortions violated the State Constitution’s equal protection clause. *Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001).

25. While the Supreme Court appeal was pending, the Alaska Legislature attempted to circumvent the superior court’s decision by passing a series of budget restrictions providing that no state funds could be used to pay for medically necessary abortions. Accordingly, three days after the Supreme Court issued its ruling, the superior

court issued another order, holding the budgetary restrictions unconstitutional and once again ordering the Department to comply with *all* previous orders. In 2002, after the Legislature passed a similar budget restriction, the parties stipulated that the budget restriction was unenforceable and that all of the superior court's previous orders remain in effect.

26. From 2002 to 2013, notwithstanding the Supreme Court's decision, the Legislature enacted budgetary restrictions that prohibited the Department from paying for any abortion services except in those circumstances in which federal funding is available (i.e., in cases of rape, incest, or life-endangerment). Thus, each year, the State budget has contained the following language regarding abortion funding:

No money appropriated in this appropriation may be expended for an abortion that is not a mandatory service required under AS 47.07.030(a). The money appropriated for Health and Social Services may be expended only for mandatory services required under Title XIX of the Social Security Act and for optional services offered by the state under the state plan for medical assistance that has been approved by the United States Department of Health and Human Services.

27. Each year, the response from the Office of the Attorney General has been the same: the Department is under a court order to pay for medically necessary abortions. In 2013, for the 2014 budget, the Attorney General wrote: "DHSS, however, is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for [abortion services]. That superior court order has been upheld by the Alaska Supreme Court To date, therefore, DHSS has obeyed the superior court's order and we

must advise DHSS to continue to obey it; *i.e.*, to continue to pay for these medically necessary abortions, until such time as a court reverses the order that is now in effect.”

The 2012 Regulation Establishing a Certificate Requirement

28. In 2012, the Department adopted a regulation that requires physicians who seek reimbursement from Medicaid for providing abortion services to sign and submit a “Certificate to Request Funds for Abortion” (the “2012 Certificate”) attesting that (1) the “pregnancy was the result of an act of rape or incest, or the abortion procedure . . . was performed due to physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion was performed”; or (2) “the abortion procedure was medically necessary.” 7 AAC 145.695.

29. In adopting the 2012 regulation requiring a certificate from physicians who provide abortions, the Department disregarded the Agreement’s declaration that no special certification may be required; rather payment will be made “upon receipt of a routine bill.”

30. The purported justification for the 2012 Certificate was to enable the Department to determine whether the abortion met the criteria for federal funding so that it could use federal funds to cover 50% of the costs.

31. The 2012 Certificate requires the name of the woman who had an abortion to be provided. Until the Department required this certificate, the documents provided in

seeking reimbursement for medically necessary abortions used billing codes and the patient's Medicaid number, and did include either the patient's name or the word abortion.

32. The Department does not require a similar certificate for any pregnancy-related care besides abortion.

33. Planned Parenthood has been utilizing the 2012 Certificate, but now challenges the Department's use of any form or certificate that requires the disclosure of the patient's name and sensitive health information, including that the woman has had an abortion.

The Challenged Regulation

34. On August 16, 2013, the Department issued a notice announcing its intent to adopt the Regulation, which takes away a physician's ability to use his or her medical judgment about whether an abortion is medically necessary by radically narrowing the definition of a "medically necessary" abortion. For a woman to have an abortion covered by Medicaid, her physician now must sign and submit a certification form attesting that the abortion is "medically necessary to avoid a threat of serious risk to the physical health of the woman from continuation of her pregnancy due to the impairment of a major bodily function."

35. The amended certification form (the "2014 Certificate") then requires the physician to check a box to explain the condition the woman has that meets this standard. The 2014 Certificate provides a list of 21 enumerated physical conditions to choose from,

and a checkbox for “another physical disorder, physical injury, physical illness, including a physical condition arising from the pregnancy,” or for “a psychiatric disorder that places the woman in imminent danger of medical impairment of a major bodily function if an abortion is not performed.”

36. The 21 enumerated physical conditions listed on the 2014 Certificate are: “diabetes with acute metabolic derangement or severe end organ damage, renal disease that requires dialysis treatment, severe preeclampsia, eclampsia, convulsions, status epilepticus, sickle cell anemia, severe congenital or acquired heart disease class IV, pulmonary hypertension, malignancy where pregnancy would prevent or limit treatment, severe kidney infection, congestive heart failure, epilepsy, seizures, coma, severe infection exacerbated by the pregnancy, rupture of amniotic membranes, advanced cervical dilation of more than six centimeters at less than 22 weeks gestation, cervical or cesarean section scar ectopic implantation, pregnancy not implanted in the uterine cavity, [and] amniotic fluid embolus.” Having one of these conditions alone is insufficient unless, as explained above, the abortion is “medically necessary to avoid a threat of serious risk to the physical health of the woman from continuation of her pregnancy due to the impairment of a major bodily function.”

37. The Department stated that the purpose of the Regulation and the 2014 Certificate is the same as for the 2012 Certificate: to “permit the program to determine the proper source of funds,” meaning whether the abortion should be paid for only by the State, or whether it is eligible for federal funding.

38. Written comments were submitted by Planned Parenthood and others opposing the Regulation and explaining its negative impact on low-income Alaska women as well as its legal deficiencies. On December 10, 2013, Defendant Streur adopted the proposed Regulation with only minor changes to its format. The Department did not hold a public hearing on the proposed regulatory change and to date it has not formally explained why it took this action, although Defendant Streur has been quoted as saying that the goal of the regulation is to “reduce the number of state-paid abortions.”

39. Because the Department did not hold a public hearing, citizens did not have an opportunity to orally express their views or to hear the Department’s reasons for restricting women’s access to medically necessary abortions, or why these particular criteria are necessary and appropriate. The Department did not issue a decisional document or any other type of written findings explaining why it perceived a need for this significant change, or why the Department rejected all public comments calling for substantive amendments to the Certificate. For example, Planned Parenthood noted in its comments on the Regulation that the 2014 Certificate unnecessarily threatens a woman’s right to privacy by revealing both the fact that she is having an abortion and her precise medical conditions. Yet, in lieu of revising the Regulation to reduce such exposure, the Department did the opposite, reformatting the Certificate to require that the patient’s name be listed on both its front *and* back.

40. The 2014 Certificate imposes narrow and restrictive limits on eligibility for coverage of abortion services that are not required for any other procedure or service. Women who choose to continue a pregnancy are not subject to these limitations for Medicaid coverage for their pre-natal care, delivery, and post-natal care. No other part of the Medicaid program in Alaska robs doctors of the ability to determine whether the procedure is medically necessary, or requires that an individual be as seriously ill as the Regulation requires, before he or she can receive services covered by Medicaid.

41. Besides doctors who perform abortions, no other Medicaid providers in Alaska are required to submit a certificate, containing sensitive patient information, attesting to the fact that a service was medically necessary under a limited definition as a condition for the patient to receive coverage.

42. There is no connection whatsoever between the asserted need to distinguish abortion procedures eligible for federal Medicaid reimbursement from other medically necessary procedures and the restrictive definition of medically necessary set forth in the Regulation.

43. The Division of Legal and Research Services of the Legislative Affairs Agency, upon review of the Regulation, stated that the Department “does not provide a justification, compelling or otherwise, for creating a standard for medical necessity that is far more restrictive than for any other type of service, even very expensive services, or for

deviating from its current generally applicable standard based on professional standards of practice.”

44. The Regulation is in direct contravention of the Agreement, which specifically states that payment will be made for abortion services “upon receipt of the routine bill from the health care provider.” The Regulation is also in direct contravention of the September 18, 2000 superior court Order requiring the State to pay for medically necessary abortions defined as a procedure “to ameliorate a condition harmful to the women’s physical or psychological health, as determined by the treating physician performing the abortion services in his or her professional judgment.”

45. The Regulation was adopted in violation of the Administrative Procedure Act (“APA”) because the Department has exceeded its rule-making powers. The Regulation is not consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring the Department’s rule-making authority.

46. The Regulation is unreasonable and arbitrary because the Department has not genuinely engaged in reasoned decision-making, and therefore is invalid under the APA.

47. In addition, the Regulation fails under the APA because it conflicts with both the Alaska Constitution and the express terms of the Department’s authorizing statute, which only permits the Department to adopt regulations “not inconsistent with law.”

48. The Regulation fails under the APA because the Department substantially failed to comply with the APA’s procedural requirements.

49. The Regulation, through the 2014 Certificate, perpetuates and exacerbates the problems created by the 2012 Certificate, by exposing even more sensitive patient health information to disclosure. Unlike documentation requirements for other procedures, both the 2012 and 2014 Certificates signal to even the most casual observer that the Medicaid claim involves abortion, and unnecessarily includes the patient's name, in addition to her Medicaid number. The 2014 Certificate goes even farther, however, by requiring the physician to check the box next to one of the enumerated health conditions. Thus a patient's name is linked to the abortion procedure *and* an additional medical condition on a document that is sent by fax or mail to the Department.

50. Although Department employees are supposed to maintain the confidentiality of this information, in 2012 the Department entered into a Resolution Agreement with the United States Department of Health and Human Services, which included payment of \$1.7 million by the State, to resolve allegations that the Department had not met its obligations to ensure the privacy of individually identifiable health information.

The Impact of the Restrictive Definition of Medically Necessary Abortion

51. The ability of women to access safe and timely abortion services is an important component of public health.

52. A significant number of Alaska women are dependent on Medicaid to fund medically necessary abortions. In 2012, the most recent year for which data are available, more than 500 abortions were paid for by the State Medicaid program.

53. The discriminatory funding scheme established by the Regulation will unnecessarily burden – and in some cases prevent – low-income women from obtaining medically necessary abortions.

54. Under the Regulation, women with psychological conditions will be largely precluded from receiving Medicaid coverage for an abortion. Such conditions include depression and bipolar disorder. These conditions can be exacerbated by pregnancy, and pregnancy can interfere with ongoing treatment because drugs used to treat these conditions may be harmful to the fetus.

55. Under the Regulation, a woman with a physical condition that her doctor believes will be alleviated by a medically necessary abortion, but that does not rise to the level of severity required by the 2014 Certificate, will be precluded from Medicaid coverage for the abortion.

56. The cost of an abortion at Planned Parenthood is at least \$650, and can cost upwards of \$1,340 for a woman in the second trimester of pregnancy. In addition to the costs of the procedure itself, many women in Alaska must travel significant distances to obtain abortion services, which are available in only a limited number of locations. For women in villages off the road grid, this requires both air travel and additional lodging expenses. Women seeking second trimester abortions not only face increased fees, they must travel out of state to obtain the procedure. While some financial assistance may be

available, it will not be enough to cover the loss of Medicaid funding for the procedure and transportation costs.

57. It is not clear under the Regulation whether transportation costs, routinely covered by Medicaid, will be covered for women who must travel in order to even have a physician determine if the abortion would be covered under the Regulation. Assuming Medicaid will not cover the transportation costs for a woman seeking a determination of whether her condition is severe enough to come within the narrow definition of medically necessary, those costs would be prohibitive for many low-income women.

58. Absent state assistance, women living in poverty will have great difficulty paying for abortions, transportation costs, and related expenses, and will be forced to draw upon resources reserved for food, rent, clothing, and other essentials to pay for an abortion. Many will have to delay the procedure in order to raise the money.

59. Although abortions are very safe, and far safer than carrying a pregnancy to term, the risks increase with each week of pregnancy. If they are denied Medicaid coverage for abortion, some women will receive later abortions, which carry more risks than earlier abortions.

60. Without state assistance for low-income women in need of abortions for health reasons, providers in Alaska may be forced to delay the procedure for women whose health would be ameliorated by an immediate abortion and will need to closely monitor the

patient's deteriorating health and provide an emergency abortion if she develops a "serious risk [to her life or health] . . . due to the impairment of a major bodily function."

61. The Regulation will force some women who depend on Medicaid for their health care to carry a pregnancy to term even though an abortion was medically necessary in the judgment of her physician.

COUNT I: VIOLATION OF RIGHT TO EQUAL PROTECTION

62. Planned Parenthood re-alleges each allegation made in paragraphs 1-61 above.

63. The Regulation violates the rights of women under the equal protection and inherent rights clauses of Article I, sections 1 and 3 of the Alaska Constitution and does so without furthering compelling state interests by the least restrictive means in several ways, including, but not limited to, the following:

(a) by singling out abortion as the only type of health care in the Medicaid program for which the Department has taken away physicians' ability to determine based on their professional judgment what is "medically necessary" and instead imposing a restrictive definition of "medically necessary;"

(b) by discriminating against women who choose to terminate a pregnancy by requiring them to meet onerous criteria for Medicaid coverage not required for women who choose to continue a pregnancy; and

(c) by requiring a signed certificate by a physician (in addition to the routine bill) that requires the physician to certify that the abortion comes within the narrow definition of “medically necessary” before Medicaid will pay for services.

COUNT II: VIOLATION OF RIGHT TO PRIVACY

64. Planned Parenthood re-alleges each allegation made in paragraphs 1-63 above.

65. The Regulation violates the privacy rights of women who choose to terminate a pregnancy under Article I, section 22 of the Alaska Constitution because it burdens their fundamental right to reproductive choice in numerous ways without furthering compelling state interests by the least restrictive means, including, but not limited to, the following:

(a) the Regulation will deny Medicaid coverage for some medically necessary abortions, resulting in some women having to forgo abortion altogether, and forcing others to delay the procedure and divert payment for household necessities;

(b) the 2012 and 2014 Certificates unnecessarily require disclosure of the name of and detailed medical information about patients seeking medically necessary abortions, while providing inadequate protections for individual patient privacy, and otherwise requiring disclosure of sensitive patient information not by the least intrusive means.

COUNT III: VIOLATION OF RIGHT TO HEALTH

66. Planned Parenthood re-alleges each allegation made in paragraphs 1-65 above.

67. The Regulation violates Article 7, section 4 of the Alaska Constitution, which directs that “[t]he legislature shall provide for the promotion and protection of public health,” by making medically necessary abortions inaccessible to Alaska women who are dependent on Medicaid for their health care. In reducing the ability of women to access medically necessary care, the Regulation actually harms, rather than protects, public health.

COUNT IV: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

68. Planned Parenthood re-alleges each allegation made in paragraphs 1-67 above.

69. The Regulation is invalid under the Administrative Procedure Act because it:

(a) exceeds the Department’s rulemaking authority;

(b) is unreasonable and arbitrary; and

(c) conflicts with the Alaska Constitution and is otherwise “inconsistent with law.”

70. In addition, the Department violated the APA by substantially failing to comply with the procedural requirements under AS 44.62.010 - 44.62.320, including, but not limited to, by failing to hold a public hearing on the proposed regulation or otherwise explaining why these criteria are necessary.

COUNT V: REQUEST FOR INJUNCTIVE RELIEF

71. Planned Parenthood re-alleges each allegation made in paragraphs 1-70 above.

72. Planned Parenthood requests an injunction against enforcement of the Regulation to prevent harm to its Medicaid patients seeking medically necessary abortions.

73. Planned Parenthood meets the standard for injunctive relief because: a) Planned Parenthood's patients face irreparable harm if an injunction is not issued; b) Defendants will not be harmed; and c) Planned Parenthood's claims raise serious and substantial questions going to the merits of the case. Moreover, Planned Parenthood can make a clear showing of probable success on the merits.

PRAYER FOR RELIEF

Accordingly, based on the facts set forth above, Planned Parenthood requests that judgment be entered in its favor and against Defendants as follows:

1. For declaratory judgment that the Regulation violates the rights of Planned Parenthood's patients as protected by the Alaska Constitution, and is therefore void and of no effect;
2. For declaratory judgment that the Regulation was promulgated in violation of the Administrative Procedure Act and is therefore void and of no effect;
3. For declaratory judgment that the 2012 Certificate and Regulation, by requiring that patient names and other sensitive health information be disclosed on a certification form for medically necessary abortions, violate the rights of patients protected by the Alaska Constitution;
4. For injunctive relief restraining enforcement of the Regulation and enjoining Defendants, their employees, agents, appointees, and successors from enforcing, threatening to enforce, or otherwise applying the Regulation;

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5. For injunctive relief restraining the use of the 2012 Certificate and/or the Certification Form of the Regulation, or any certification form for medically necessary abortions that discloses the name of a patient and sensitive health information, and enjoining Defendants, their employees, agents, appointees, and successors from utilizing any such certification form;

6. For Plaintiff's costs and attorneys' fees incurred in obtaining the relief sought in this proceeding; and

7. For such other relief as this court may deem just and equitable.

DATED THIS 29th DAY OF JANUARY, 2014.

SUSAN ORLANSKY LLC

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*Motions to appear pro hac vice forthcoming

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ALASKA

MEMORANDUM

TO: Kurt West, AAC Contact
Department of Health and Social Services

FROM: Scott Meriwether
Special Assistant
907.465.3509 

DATE: January 7, 2014

RE: Filed Permanent Regulations: Department of Health and Social Services
Department of Health and Social Services Regulations re: Payment for Abortion: 7 AAC
160.900(d)(30)

Attorney General File:	JU2013200550
Regulation Filed:	1/3/2014
Effective Date:	2/2/2014
Print:	209, April 2014

cc with enclosures:

Linda Miller, Department of Law
Crystal Koeneman, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

JU2013200550

ORDER ADOPTING CHANGES TO REGULATIONS OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES


The attached one page of regulations, dealing with adoption by reference and abortion payments, are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Health and Social Services adopts, under the authority of AS 47.05.010, AS 47.05.012, AS 47.07.030, and AS 47.07.040, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and AS 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Health and Social Services paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: 10 Dec 2013
Juneau, Alaska

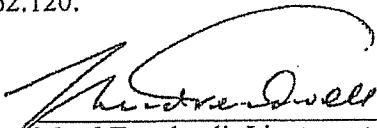


William J. Sfeur, Commissioner
Department of Health and Social Services

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on

January 3, 2014 at 3:52 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – AS 44.62.120.



Mead Treadwell, Lieutenant Governor
State of Alaska

Effective February 2, 2014.

Register 209, April 2014.

Register 209, April 2013⁴

HEALTH AND SOCIAL SERVICES

7 AAC 160.900(d)(30) is amended to read:

(30) the *Certificate to Request Funds for Abortion*, revised as of December 2013

[NOVEMBER 2012];

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am 2 / 2 /2014, Register 209)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.012

Certificate to Request Funds for Abortion

The Hyde Amendment allows federal funds to be expended for an abortion only "(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed." *Section 508(a) of Public Law 111-8.*

In accordance with a 2001 order of the Supreme Court of the State of Alaska, the Alaska Medicaid program must, under certain circumstances, provide funding for abortions for women who receive Alaska Medicaid but for whom the abortion is not covered by the federal Medicaid program. If the abortion is medically necessary and not elective, the Alaska Medicaid program may pay some or all of the costs. This form will permit the program to determine the proper source of funds for such payment.

(Recipient's Full Name PRINT OR TYPE)

(Recipient's Medicaid Identification Number)

had an abortion procedure performed on ____/____/____ (month /day/ year).

I certify based upon all of the information available to me that before performing the abortion procedure on the above patient her pregnancy was the result of an act of rape or incest, or the abortion procedure on the above patient was performed due to physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion was performed.

I certify based upon all of the information available to me that the above does not apply, but in my professional medical judgment the abortion procedure was medically necessary to avoid a threat of serious risk to the physical health of the woman from continuation of her pregnancy due to the impairment of a major bodily function including but not limited to one of the following:

___ diabetes with acute metabolic derangement or severe end organ damage

___ renal disease that requires dialysis treatment

___ severe preeclampsia

___ eclampsia

___ convulsions

___ status epilepticus

___ sickle cell anemia

___ severe congenital or acquired heart disease class IV

___ pulmonary hypertension

___ malignancy where pregnancy would prevent or limit treatment

___ severe kidney infection

- congestive heart failure
- epilepsy
- seizures
- coma
- severe infection exacerbated by the pregnancy
- rupture of amniotic membranes
- advanced cervical dilation of more than six centimeters at less than 22 weeks gestation
- cervical or cesarean section scar ectopic implantation
- pregnancy not implanted in the uterine cavity
- amniotic fluid embolus
- another physical disorder, physical injury, physical illness, including a physical condition arising from the pregnancy
- a psychiatric disorder that places the woman in imminent danger of medical impairment of a major bodily function if an abortion is not performed.

This certificate must be signed and dated by the recipient's attending physician and must be submitted to the Division of Health Care Services at the address below. The original is to be kept in the provider's file for the patient with all supporting documentation. No payment will be made for an abortion without a signed certificate on file.

 (Recipient's Full Name PRINT OR TYPE)

 (Recipient's Medicaid Identification Number)

 Printed Name of Recipient's Attending Physician

M.D. or D.O.

 of Recipient's Attending Physician

M.D. or D.O.

____/____/____ Signature

Date of Physician's Signature

Submit a copy of the completed and signed certificate by mail or fax to:

Alaska Division of Health Care Services
Attention: Medical Review
4501 Business Park Blvd., Bldg. L Suite 24
Anchorage, AK 99503-7167

Fax: 907.269.8868