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, STATE OF ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, AND STATE OF ALASKA, Defendants.	)	Case No. 3AN-14-04711 CI

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action challenges the validity of a regulation adopted by the Alaska Department of Health and Social Services that was scheduled to take effect on February 2, 2014 (hereinafter "the Regulation") and a law recently enacted by the Alaska legislature and signed by the Governor that is scheduled to take effect on July 16, 2014 (hereinafter "SB 49" or "the Statute"). Both the Regulation and the Statute (hereinafter collectively "the Funding Restrictions") severely restrict the circumstances under which Alaska will pay for medically necessary abortions for women who rely on the Medicaid program for their health care. The Funding Restrictions violate the Alaska Constitution

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and the Regulation additionally violates the Alaska Administrative Procedure Act. If not enjoined, the Funding Restrictions will have significant and irreversible consequences for Medicaid-eligible Alaska women. A copy of the Regulation (7 AAC 160.900(d)(30)) and the "Certificate to Request Funds for Abortion" are attached as Exhibit A. A copy of SB 49, SLA 14, ch. 8, to be codified as AS 47.07.068, is attached as Exhibit B.

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 Funding Restrictions, while not identical, both impose narrow definitions 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.

4. 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.

5. The Statute defines medically necessary abortions as those necessary "to avoid a threat of serious risk to the life or physical health of a woman from continuation

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of the woman's pregnancy" and further defines "serious risk to the life or physical health" to mean either "death" or "impairment of a major bodily function" based on an enumerated list of severe health conditions. The Statute completely and intentionally excludes mental health conditions from the enumerated list of severe health conditions that can establish that an abortion is "medically necessary."

6. 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 covers other medical services. *See State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 913 (Alaska 2001) (hereinafter "*Planned Parenthood of Alaska*").

7. The Funding Restrictions harm 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 Funding Restrictions are, by definition low-income, and for many of them, the denial of state funding for an abortion is tantamount to a total ban.

8. The denial of coverage for abortions that do not meet the demanding criteria of the Funding Restrictions will burden the right of reproductive choice of low-

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income women, in violation of the Alaska Constitution. In addition, the Regulation was promulgated in violation of the Administrative Procedure Act.

9. The Funding Restrictions should therefore be declared unconstitutional, and the Regulation in violation of state law, and their enforcement enjoined.

JURISDICTION

10. This is a complaint for declaratory and injunctive relief brought pursuant to AS 09.40.230, 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 09.50.250, AS 09.05.015, and AS 22.10.020.

PARTIES

11. 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 and 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

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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.

12. 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.

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

14. Defendant State of Alaska, represented by the Attorney General through the Department of Law, is responsible for the implementation of the Statute and enforcement of its restrictions.

FACTUAL ALLEGATIONS

Statutory and Regulatory Background

15. 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.

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16. 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.

17. 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.

18. 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* http://dhss.alaska.gov/Commissioner/Documents/medicaidstateplan/PDF_SP/SP_pgs/SP_att3.1c.pdf (last visited April 25, 2014).

19. In addition, regulations adopted by the Department require that all services eligible for reimbursement 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."

20. 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

21. 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-1970s, 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.

22. 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.

23. In 1993, the Department adopted a new regulation that limited GRM funding to "therapeutic" or "medically necessary" abortions (the terms are used

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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).

24. 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, "[p]ayments for services relating to abortion will continue to be paid by DHSS according to the regulations *upon receipt of the routine bill from the health care provider.*" The Agreement further makes clear that "the treating physician's professional judgment is sufficient for payment." For the 20 years since this Agreement, Planned Parenthood's physicians have followed these procedures when submitting claims for payment.

25. 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.

26. 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 woman's physical or psychological health, as determined by the treating physician performing the abortion services in his or her professional judgment."

27. 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).

28. 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

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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.

29. From 2002 to 2014, 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.

30. Each year, through the adoption of the 2014 budget, 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

31. 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.

32. 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 the routine bill."

33. 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.

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

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providers who sought 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.

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

36. 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

37. 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."

38. 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.

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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."

39. 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."

40. 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

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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.

41. 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."

42. 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 had 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.

43. 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.

44. 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."

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.

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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 further, 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. The Regulation also directly contravenes the Agreement, which specifically states that payment will be made for abortion services "upon receipt of the routine bill from the health care provider."

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 2014 Statute

51. During the 2014 session, the Alaska Legislature passed SB 49 "to define the phrase 'medically necessary' for purposes of Medicaid funding of abortion services." SB 49, SLA 14, ch. 8, Section 1. Governor Sean Parnell signed the measure on April 17, 2014, and it is scheduled to take effect on July 16, 2014.

52. The Statute directs the Department to pay for abortion services only "for a medically necessary abortion or [if] the pregnancy was the result of rape or incest." Payment for "elective abortions," defined to mean "an abortion that is not a medically necessary abortion," is prohibited. SB 49, SLA 14, ch. 8, Section 2, to be codified at AS 47.07.068(a).

53. Under the Statute, "'medically necessary abortion' means that, in a physician's objective and reasonable professional judgment after considering medically relevant factors, an abortion must be performed to avoid a threat of serious risk to the life or physical health of a woman from continuation of the woman's pregnancy." SB 49, SLA 14, ch. 8, Section 2, to be codified at 47.07.068(b)(3).

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54. "'[S]erious risk to the life or physical health' includes, but is not limited to, a serious risk to the pregnant woman of (A) death; or (B) impairment of a major bodily function because of (i) diabetes with acute metabolic derangement or severe end organ damage; (ii) renal disease that requires dialysis treatment; (iii) severe preeclampsia; (iv) eclampsia; (v) convulsions; (iv) status epilepticus; (vii) sickle cell anemia; (viii) severe congenital or acquired heart disease class IV; (ix) pulmonary hypertension; (x) malignancy where pregnancy would prevent or limit treatment; (xi) kidney infection; (xii) congestive heart failure; (xiii) epilepsy; (xiv) seizures; (xv) coma; (xvi) severe infection exacerbated by the pregnancy; (xvii) rupture of amniotic membranes; (xviii) advanced cervical dilation of more than six centimeters at less than 22 weeks gestation; (xix) cervical or cesarean section scar ectopic implantation; (xx) any pregnancy not implanted in the uterine cavity; (xxi) amniotic fluid embolus; and (xxii) another physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy that places the woman in danger of death or major bodily impairment if an abortion is not performed." SB 49, SLA 14, ch. 8, Section 2, to be codified at AS 47.07.068(b)(4).

55. The Statute completely excludes mental health as a basis on which a physician may seek reimbursement for a medically necessary abortion. The legislative history of SB 49 makes clear that the omission of mental health was intentional. For example, the House rejected a floor amendment that would have added language to

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permit payment for abortions where a psychiatric disorder placed a woman at risk of impairment of a major bodily function.

56. The Statute requires the physician's determination of "medically necessary" to be based on "objective and reasonable medical judgment after considering relevant medical factors."

57. However, the Statute prevents a physician from seeking Medicaid reimbursement for the abortion unless the physician determines that "an abortion *must be* performed to avoid a threat of serious risk to the life or physical health of a woman." Thus, to meet the requirement for reimbursement of a "medically necessary abortion" under the Statute, the physician would have to determine that an abortion is the only course of treatment to avoid a threat of serious risk to the life or physical health of a woman.

58. It is not clear whether the Statute supersedes the Regulation such that, as of the effective date of the Statute, the Regulation is repealed and no longer enforceable or whether the Regulation will remain on the books and potentially be enforceable pending issuance of a new regulation and/or certificate to implement the Statute.

The Impact of the Restrictive Definitions of Medically Necessary Abortion

59. The Funding Restrictions impose 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

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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 Funding Restrictions require, before he or she may receive services covered by Medicaid.

60. The Funding Restrictions are 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."

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

62. A significant number of Alaska women are dependent on Medicaid to fund medically necessary abortions. In 2013, the most recent year for which data are available, more than 500 abortions were paid for by the State Medicaid program.

63. The discriminatory funding scheme created by the Funding Restrictions will unnecessarily burden – and in some cases prevent – low-income women from obtaining medically necessary abortions.

64. Under the Statute, women with psychological conditions will be precluded from receiving Medicaid coverage for an abortion on those grounds. Similarly, the

Regulation largely precludes coverage for women with psychological conditions. 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.

65. Under the Funding Restrictions, 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, will be precluded from Medicaid coverage for the abortion.

66. 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.

67. It is not clear under the Funding Restrictions 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. Assuming Medicaid

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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.

68. 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.

69. 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.

70. 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 instead 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 physical health] . . . due to the impairment of a major bodily function."

71. The Funding Restrictions 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.

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COUNT I: VIOLATION OF RIGHT TO EQUAL PROTECTION

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

73. The Regulation and the Statute violate the rights of women under the equal protection and inherent rights clauses of Article I, sections 1 and 3 of the Alaska Constitution and do 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 restrictive definitions 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) as to the Regulation, 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.

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COUNT II: VIOLATION OF RIGHT TO PRIVACY

74. Planned Parenthood re-alleges each allegation made in paragraphs 1-73 above.

75. The Regulation and the Statute violate the privacy rights of women who choose to terminate a pregnancy under Article I, section 22 of the Alaska Constitution because they burden women's 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 Funding Restrictions 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

76. Planned Parenthood re-alleges each allegation made in paragraphs 1-75 above.

77. The Regulation and the Statue violate 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 Funding Restrictions actually harm, rather than protect, public health.

COUNT IV: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

78. Planned Parenthood re-alleges each allegation made in paragraphs 1-77 above.

79. 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."

80. 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 the criteria in the Regulation are necessary.

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COUNT V: REQUEST FOR INJUNCTIVE RELIEF

81. Planned Parenthood re-alleges each allegation made in paragraphs 1-80 above.

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

83. 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 Statute violates the rights of Planned Parenthood's patients as protected by the Alaska Constitution, and is therefore void and of no effect;

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3. For declaratory judgment that the Regulation was promulgated in violation of the Administrative Procedure Act and is therefore void and of no effect;

4. 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;

5. 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;

6. For injunctive relief restraining enforcement of the Statute and enjoining Defendants, their employees, agents, appointees, and successors from enforcing, threatening to enforce, or otherwise applying the Statute;

7. 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;

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

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

DATED THIS 2nd DAY OF May, 2014.

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