



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

*Department of
Health and Social Services*

OFFICE OF THE COMMISSIONER
Anchorage

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July 30, 2012

The Honorable Hollis French
Alaska State Senate
716 West Fourth Avenue, Suite 420
Anchorage, Alaska 99501-2133

Dear Senator French:

Thank you for your letter of July 27, 2012 and this opportunity for the department to respond to your concerns.

You expressed concern that inclusion of the language “health of the mother is endangered by the pregnancy” in (b)(3) of the proposed regulations would restrict the definition of medical necessity. Inclusion of this phrase was not intended to define or restrict the term “medical necessity”, a basic requirement for all Medical Assistance-covered services (7 AAC 105.100(5)), but instead to 1) apply the exact verbiage used four times by the Alaska Supreme Court in its July 27, 2001 opinion on the State of Alaska v. Planned Parenthood of Alaska, et al., when describing covered abortions that fall outside Hyde Amendment requirements, and 2) use the term “endangered” in relation to health just as the term was used in the Hyde Amendment in relation to life. Furthermore, the department relies on the physician’s professional judgment as to whether continuing the pregnancy would harm the woman, and the nature of that harm, as indicated by his or her completion of the Certificate to Request Federal or State Funds for Abortion.

The department will evaluate, after all of the public comment is received and reviewed, whether any amendment should be made to the proposed language in the regulation. Ultimately, if there is a challenge to the adopted regulation, the court will determine whether that language is constitutional.

Also in your letter you expressed concern that requiring providers to submit a form would pose “unequal treatment and an undue burden” on providers, and that “other Medicaid services don’t require special certification forms”. For some services the provider is required to submit a copy of the patient’s medical records, while for numerous other services the

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provider is required to complete and submit a form or certificate, in lieu of submitting medical records, attesting to need for the service. Some of the services for which a form or certificate is required of the provider include orthodontia, non-emergent transportation and accommodation services, durable medical equipment and supplies, specified pharmaceuticals, all home and community based waiver services, and selected professionals (physician, advanced nurse practitioner, dental, etc.).

In the case of abortion services, the department determined that the least burdensome method for the provider and the most reliable method for the department to document both medical necessity and appropriateness of the funding source, is for the physician to complete, sign, and submit the *Certificate to Request Federal or State Funds for Abortion* form.

Sincerely,

A handwritten signature in blue ink that reads "William J. Streur". The signature is written in a cursive style with a large initial 'W' and 'S'.

William J. Streur

Commissioner