



Planned Parenthood of the Great Northwest v. Streur, et al.

No. 3AN-14-04711 CI (Alaska Super. 2015)

Country: United States

Region: Americas

Year: 2015

Court: Superior Court for the State of Alaska

Health Topics: Health care and health services, Health systems and financing, Poverty, Sexual and reproductive health

Human Rights: Freedom from discrimination

Facts

The case concerned an Alaskan regulation that restricted low-income women from accessing medically necessary abortion care under Medicaid, in particular over the definition of “medically necessary” abortions. The Department of Health and Social Services (DHSS) had funded such abortions after a 2001 ruling from the Supreme Court of Alaska struck down a regulation that restricted state-funded Medicaid abortions to instances of rape, incest or life endangerment, but did not explicitly define the term “medically necessary.” After that ruling, the State operated under the standard of medical necessity provided in an injunctive order from the superior court: “those abortions certified by a physician as necessary to prevent the death or disability of the woman, or to ameliorate a condition harmful to the woman’s physical or psychological health.”

The regulation at issue redefined the term as “necessary to avoid a threat of a serious risk to the physical health of the woman from continuation of her pregnancy due to the impairment of a major bodily function” and gave a list of twenty-one conditions as examples of such major bodily function. Planned Parenthood of the Great Northwest challenged the new state regulation.

Decision and Reasoning

The Court held that the regulation was unconstitutional because it violated the state of Alaska’s equal protection doctrine.

The Court noted that, contrary to normal DHSS procedure, the Commissioner of DHSS had developed the regulation on his own without consulting DHSS staff or other experts. The Court also found that of over one billion dollars per year spent on Medicaid, less than \$200,000 is expended on abortions, and that in non-abortion contexts, DHSS generally presumes that a service provided by a physician is medically necessary and pays for various services related to pregnancy without certification of their medical necessity.

The Court found that the statute recognized as medically necessary only those abortions necessary to avoid serious physical risks that were either fully realized or imminent and attributable to the enumerated conditions. The Court also noted that the regulation’s mental health category was limited to a full-fledged psychiatric disorder that posed an imminent risk of suicide. The Court also concluded that the legislature had merely expanded an unconstitutional 2011 regulation by redefining the definition of medical necessity.

Decision Excerpts

“The State, having established a health care program for the poor, may not selectively deny necessary care to eligible women merely because the threat to their health arises from pregnancy.” Page 3.

“... the underlying logic has been the same in decision after decision: ‘[W]hen state government seeks to act for the common benefit, protection, and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens.’” Page 5.

“The State reads [the statute] as a broad authorization for a physician to perform abortions and thus avoid non-trivial physical health detriments that the physician can concretely name. Plaintiff reads it as the Hyde

Amendment is disguise, effectively a life-endangerment standard. These disparate readings suggest a lack of clarity in the statute . . . the legislative history convinces the court that the legislature intended the provision as a high-risk, high-hazard standard that would preclude funding for most Medicaid abortions.” Page 29.

“The State argued that the statute leaves ‘a lot of room for the doctor’s discretion’ . . . But the legislative history is consistent only with a hard-core standard based on definitive bright lines . . . the standard entails conditions so present and so dangerous that even a pro-life Ob-Gyn would advise a pro-life patient who desired to carry to term to have an abortion for her own safety . . . The explicitly catastrophic nature of the enumerated conditions in the statute and the regulation, viewed in the light of the legislative history, contradicts the State’s statutory construction.” Pages 31-32.

“The legislature’s response [to the 2001 decision], enacted fourteen years later, was to expand the unconstitutional 2001 regulation by nominally adding a health endangerment component to its definition of medical necessity . . . The purported broadening of the standard is largely illusory because the enumerated conditions would likely qualify for federal Medicaid funding under the life-endangerment standard of the Hyde Amendment.” Page 34.

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