DEPARTMENT OF HEALTH AND SOCIAL SERVICES

PROPOSED CHANGES TO REGULATIONS

Medicaid Coverage and Payment.

Home and Community-Based Waiver Services Conditions of Participation

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PUBLIC REVIEW DRAFT

May 28, 2014

COMMENT PERIOD ENDS: June 30, 2014

Please see public notice for details about how to comment on these proposed changes.

Notes to reader:

1. Except as discussed in note 2, new text that amends an existing regulation is **bolded and underlined**.

2. If the lead-in line above the text of each section of the regulations states that a new section, subsection, paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.

3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is to be deleted.

4**.** When the word "including" is used, Alaska Statutes provide that it means "including, but not limited to."

5. Only the text that is being changed within a section of the current regulations is included in this draft. Refer to the text of that whole section, published in the current Alaska Administrative Code, to determine how a proposed change relates within the context of the whole section and the whole chapter.

7 AAC 130.207(c)(3) is amended to read:

(3) notify the applicant and care coordinator of the level-of-care determination**, except that the department may extend the notification timeframe for an additional 30 business days when an assessment is referred for independent review under 7 AAC 130.213**.

(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

The introductory language of 7 AAC 130.217(a)(3) is amended to read:

(3) prepare in writing**, on a form provided by the department,** a plan of care that

The introductory language of 7 AAC 130.217(a)(5) is amended to read:

(5) submit the plan of care and supporting documentation to the department for approval; **the care coordinator shall submit, not less than once every 12 months, a plan of care based on the current assessment or reassessment and approved level-of-care determination,** unless the care coordinator has submitted to the department written

documentation of unusual circumstances that prevent timely completion of the plan of care, and the department has approved a later submission date, the care coordinator shall submit the plan of care not later than

7 AAC 130.217(c) is amended to read:

(c) Not later than 30 **business** days after the department receives the complete plan of care, the department will notify the recipient, the recipient's representative, and the recipient's care coordinator of the department's approval or disapproval of specific services.

7 AAC 130.217(e) is repealed and readopted to read:

(e) Not later than 30 business days after the department receives the complete plan of care amendment, the department will notify the recipient, the recipient's representative, and the recipient's care coordinator of the department's approval or disapproval of specific services

(The existing text for (e) is presented below for the reader to compare to the proposed text)

[(e)THE DEPARTMENT WILL APPROVE OR DENY AN AMENDMENT TO A PLAN OF CARE IN ACCORDANCE WITH (C) OF THIS SECTION].

(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

7 AAC 130.219(e)(7)(A) is amended to read:

(A) reports that the provider has been unable **to** obtain cooperation with [SERVICE] delivery **of service** or to mitigate the risk of physical injury to a caregiver or other recipients through reasonable accommodation of the recipient's disability; and

7 AAC 130.219(e) is amended by adding a new paragraph to read:

(8) the recipient or the recipient's representative fails to take an action or to submit documentation required in 7 AAC 130.209 – 7 AAC 103.217.

(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

The introductory language of 7 AAC 130.220(b) is amended to read:

(b) **If a provider demonstrates to the department's satisfaction that the provider possesses the requisite skills and competencies necessary to meet the needs of the recipient population for which the provider plans to offer home and community-based waiver services, the** [THE]department will certify **the** [A] provider under this section as one or more of the following provider types, and will designate the specific home and community-based waiver services for which that provider is certified:

7 AAC 130.220(f) is amended to read:

(f) The department will monitor a home and community-based waiver services provider's compliance with the requirements of **7 AAC 105.200 – 7 AAC 105.280 and** this chapter**; the department will**

(1) monitor by means of an audit, program review, or investigation that may take place at the provider's place of business or at a site where home and-community based waiver services are provided to a recipient;

(2) request records in accordance with 7 AAC 105.240 related to services provided to a home and-community-based waiver recipient or to a provider's home and-community-based waiver services business operations;

(3) take immediate custody of a provider's original records maintained in accordance with 7 AAC 105.230 when the department has reason to believe, based on an audit, program review, or investigation, that those records are at risk of alteration.

7 AAC 130.220(h)(4) is amended to read:

(4) if the department has evidence that demonstrates that the provider has not satisfied the requirements of a remediation plan under (g) of this section **or met any of the conditions for ending suspension under (i) of this section**.

7 AAC 130.220(i) is repealed and readopted to read:

(i) Notwithstanding (g) and (h) of this section, the department

(1) may suspend the certification of a provider without a hearing and without

providing an opportunity to correct noncompliance with applicable regulations if the department

(A) has reasonable cause to believe, based on evidence from an audit, program review, or investigation, that a provider's noncompliance with 7 AAC 105 - 7 AAC 160 constitutes

(i) an immediate or imminent danger to the health, safety, and welfare of a recipient; or

(ii) fraud, abuse, or waste of Medicaid funds;

(B) determines that a provider fails to comply with the requirements of 7 AAC 10.900 – 7 AAC 10.990; or

(C) receives notice that a provider's license under AS 47.32 has been suspended or revoked;

(2) will provide, when suspending a provider under this subsection,

(A) initial notice, which may be oral, to the provider at the time the department determines that an immediate suspension is necessary;

(B) written notice, within 14 business days after the initial notice to the provider, that includes

(i) a copy of the document upon which the suspension is based;

(ii) a description of any enforcement action the department intends to take and the events that must occur before a suspension may be ended; and

(iii) information regarding the right to appeal;

(3) will end suspension under this subsection when the department receives written notice that

(A) the provider's noncompliance with 7 AAC 105 – 7 AAC 160 has been corrected;

(B) a prosecuting authority determined there is insufficient evidence to support any allegations of fraud, abuse, or waste of Medicaid funds;

(C) legal proceedings against the provider related to the allegations are completed in the provider's favor on all charges;

(D) the provider is in compliance with 7 AAC 10.900 – 7 AAC 10.990; or

(E) the provider's license under AS 47.32 has been reinstated.

(The existing text for (i) is presented below for the reader to compare to the proposed text)

[(i) A PROVIDER MAY APPEAL UNDER 7 AAC 105.460 A DECISION BY THE DEPARTMENT TO

(1) DENY THE PROVIDER'S APPLICATION FOR RECERTIFICATION; OR

(2) DECERTIFY THE PROVIDER]

7 AAC 130.220 is amended by adding a new subsection to read:

(j) A provider may appeal under 7 AAC 105.460 a decision by the department to

(1) deny the provider's application for certification or recertification;

(2) decertify the provider; or

(3) suspend the provider. (Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.224(c)(4) is amended to read:

(4) a use of restrictive intervention that resulted in the need for **evaluation by or consultation with a medical professional** [MEDICAL INTERVENTION]; in this paragraph, "restrictive intervention" has the meaning given in 7 AAC 130.229(g);

7 AAC 130.224(c)(6) is amended to read:

(6) **an accident,** an injury**, or another event that affected the recipient's health, safety, or welfare to the extent evaluation by or consultation with a medical professional was needed** [TO A RECIPIENT THAT RESULTED IN THE NEED FOR MEDICAL INTERVENTION];

7 AAC 130.224(c)(7) is amended to read:

(7) a medication error that resulted in the need for **evaluation by or consultation with a medical professional** [MEDICAL INTERVENTION]; in this paragraph, "medication error" has the meaning given in 7 AAC 130.227(j);

(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.227(f)(1) is amended to read:

(1) if the individual is to provide assistance with the recipient's self-administration of medication, the individual must successfully complete training that **addresses the activities outlined in (j)(2) of this section** [HAS BEEN APPROVED BY THE DEPARTMENT];

7 AAC 130.227(i)(3) is amended to read:

(3) the recipient or the recipient's representative gives **to the provider** written notice [TO THE PROVIDER OF] **designating** an individual **that will** [DESIGNATED TO] be responsible for medication administration for the recipient, and the provider arranges with that individual to administer the medication at the time medication is required by the recipient.

(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.229(b)(2) is amended to read:

(2) a prohibition on the use of
(A) seclusion as a restrictive intervention; [AND]
(B) prone restraint**; and**
(C) chemical restraint;

7 AAC 130.229(g) is amended by adding a new paragraph to read:

(3) "chemical restraint" means non-standard use of medication to restrict freedom of movement in order to manage or control behavior; the term does not include medication prescribed for the purpose of managing behavior by an individual listed in 7AAC 130.227(j)(3) and administered in accordance with the applicable requirements of 7AAC 130.227.
(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.233(d) is amended to read:

(d) A provider that intends to close, sell, or change ownership of a business certified under 7 AAC 130.220 shall send written notice of that intention to the department and to each affected recipient **and that recipient's care coordinator** not later than 60 days before the closure, sale, or change in ownership.
(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.238(f)(1) is amended to read:

(1) deny the care coordinator's application for **certification,** recertification**,** or re-enrollment; or

(Eff. 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

The introductory language of 7 AAC 130.245(a)(4) is amended to read:

(4) **when only one recipient lives in the residence where services are to be provided,** do not exceed **the following**

(A) 10 hours for each week during the period that a plan of care is in effect, up to a maximum of 520 hours for a one-year plan of care, for a recipient in one of the following recipient categories:

(i) adults with physical and developmental disabilities;

(ii) older adults or adults with physical disabilities;

(C) five hours for each week during the period that a plan of care is in effect, up to a maximum of 260 hours for a one-year plan of care, for a recipient in one of the following recipient categories:

(i) children with complex medical conditions; however, if a recipient in that category has a documented history of respiratory illness, the department will pay for chore services not to exceed 10 hours each week during the period that a plan of care is in effect, up to a maximum of 520 hours for a one-year plan of care;

(ii) individuals with intellectual and developmental disabilities**; or**

7 AAC 130.245(a) is amended by adding a new paragraph to read:

(5) when more than one recipient lives in the residence where services are to be provided, do not exceed the number of hours necessary to maintain a clean, sanitary, and safe environment for all recipients in that residence; the department will approve the number of hours appropriate for each recipient, not to exceed that allowed under (4) of this subsection, based on

(A) the recipient category of each recipient;

(B) the degree to which the tasks listed in (b) of this section

(i) are pertinent and necessary for each recipient or benefit all recipients in the residence; or

(ii) duplicate any services received by any recipient under 7 AAC 125.010 – 7 AAC 125.199; and

(C) the justification for the number of hours provided in each recipient's plan of care.

7 AAC 130.245(c) is repealed and readopted to read:

(c) The department will not authorize chore services if

(1) any individual, that is an adult member of the immediate family or a caregiver for the recipient and is living in the recipient's home, is responsible for performing the chores outlined in (b) of this section;

(2) any community or voluntary agency is willing to perform those chores for the recipient;

(3) any third-party is responsible for paying for the performance of those chores for the recipient;

(4) the recipient's residence is a rental property, and the department determines those services to be the responsibility of the landlord under the lease or applicable law; or

(5) the individual, designated to provide chore services by a provider that is certified under 7 AAC 130.220 to provide chore services, resides in the same residence as the recipient of chore services.

(The existing text for (c) is presented below for the reader to compare to the proposed text)

(c) [THE DEPARTMENT WILL NOT AUTHORIZE CHORE SERVICES IF

(1) ANY RELATIVE OR CAREGIVER OF THE RECIPIENT LIVING IN THE RECIPIENT'S HOME, ANY COMMUNITY OR VOLUNTEER AGENCY, OR ANY THIRD-PARTY PAYER IS CAPABLE OF OR RESPONSIBLE FOR THE PROVISION OF THOSE SERVICES;

(2) THE RECIPIENT'S RESIDENCE IS A RENTAL PROPERTY, AND THE DEPARTMENT DETERMINES THOSE SERVICES TO BE THE RESPONSIBILITY OF THE LANDLORD UNDER THE LEASE OR APPLICABLE LAW; OR

(3) THE PROVIDER THAT IS CERTIFIED UNDER 7 AAC 130.220 TO PROVIDE CHORE SERVICES RESIDES IN THE SAME RESIDENCE AS THE RECIPIENT OF CHORE SERVICES].

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am ____/____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.250(b)(1) is amended to read:

(1) provided in a non-institutional community setting on a regular basis for not more than **10** [SIX] hours per day, not including transportation to and from the setting**, unless the department determines that the recipient is unable to benefit from any other community services or activities**; and

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am ____/____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.265(b)(2) and (b)(3) are amended to read:

(2) the health, safety, and welfare of a recipient **living** [RECEIVING CARE] in a family home habilitation services site **for the purpose of receiving services under this subsection,** are not at risk because of the primary caregiver's other obligations; and

(3) **no** [A] caregiver in the residence, paid or unpaid, is [NOT] a member of the recipient's immediate family.

7 AAC 130.265(c) is repealed and readopted to read:

(c) The department will pay for family home habilitation services under (b) of this section subject to the following limitations:

(1) for the purposes of authorizing services for recipients, the department will evaluate whether a recipient may receive services at a family home habilitation services site on the basis of the following criteria:

(A) the needs of the recipient, including the need for specialized medical technology;

(B) the capacity of the primary caregiver to provide services for the specific needs of the recipient;

(C) the adequacy of the provider's plan for primary caregiver training, recipient safety, service monitoring, and oversight regarding the number of individuals living at the site;

(D) the suitability of the physical site for the recipient;

(E) the number and the relationship to the primary caregiver of other individuals living at the site, and whether any medical conditions or behavioral characteristics of

(i) those individuals could create a risk to the health, safety, and welfare of the recipient; and

(ii) the recipient could create a risk to the health, safety, and welfare of those individuals;

(F) the ability of other individuals living at the site to provide self-care; and

(G) the degree to which any adults and children living at that site, regardless of whether those individuals receive any form of financial support from a public or private source, are dependent upon the primary caregiver for their health, safety, and welfare;

(2) for recipients in the children with complex medical conditions recipient category, the number of individuals including those recipients and any adults or children dependent upon the primary caregiver for their health, safety, and welfare, shall not exceed two at a family home habilitation services site, unless the department approves a larger number of individuals to allow placement of siblings of those recipients at the same site; the department

will authorize payment for not more than two recipients in the children with complex medical conditions recipient category at any one site;

(3) for recipients in the adults with physical and developmental disabilities recipient category and the individuals with intellectual and developmental disabilities recipient category, the number of individuals including those recipients and any adults or children dependent upon the primary caregiver for their health, safety, and welfare, shall not exceed three at a family home habilitation services site, unless the department approves a larger number of individuals

(A) to allow placement of siblings of the recipient at the same site; or

(B) because the provider demonstrates to the department's satisfaction that the primary caregiver's obligations to a larger number of individuals will not jeopardize the health, safety, and welfare of the recipients receiving services under this section;

(4) if a recipient is eligible for family home habilitation services, the department will not make separate payment for

(A) chore services under 7 AAC 130.245;

(B) family-directed respite care services under 7 AAC 130.280;

(C) transportation services under 7 AAC 130.290;

(D) meal services under 7 AAC 130.295; or

(E) services provided by another resident of a family home habilitation site;

(5) a provider of family home habilitation services may not relocate a recipient to another site or replace the primary caregiver, that was evaluated with respect to the criteria outlined in (1) of this subsection, without the approval of the department, except in an emergency when the provider determines that the primary caregiver is unable to provide services; the provider must notify the department 30 days in advance of any planned relocation or planned change of primary caregiver, and within one business day of any emergency relocation or emergency change of primary caregiver.

(The existing text for (c) is presented below for the reader to compare to the proposed text)

[(c) THE DEPARTMENT WILL PAY FOR FAMILY HOME HABILITATION SERVICES UNDER (b) OF THIS SECTION SUBJECT TO THE FOLLOWING LIMITATIONS:

(1) THE NUMBER OF INDIVIDUALS, INCLUDING NATURAL, ADOPTED, OR FOSTER CHILDREN AND DEPENDENT ADULTS RECEIVING CARE AT A FAMILY HOME HABILITATION SERVICES SITE, REGARDLESS OF WHETHER AN INDIVIDUAL IS RECEIVING ANY FORM OF FINANCIAL SUPPORT FROM A PUBLIC OR PRIVATE SOURCE, MAY NOT EXCEED THE FOLLOWING UNLESS THE DEPARTMENT APPROVES A LARGER NUMBER OF INDIVIDUALS TO ALLOW PLACEMENT OF SIBLINGS IN THE SAME RESIDENCE AS THE RECIPIENTS:

(A) TWO RECIPIENTS IN THE CHILDREN WITH COMPLEX

MEDICAL CONDITIONS RECIPIENT CATEGORY;

(B) THREE RECIPIENTS IN THE ADULTS WITH PHYSICAL AND DEVELOPMENTAL DISABILITIES RECIPIENT CATEGORY;

(C) THREE RECIPIENTS IN THE INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES RECIPIENT CATEGORY;

(2) IF A RECIPIENT IS ELIGIBLE FOR FAMILY HOME HABILITATION SERVICES, THE DEPARTMENT WILL NOT MAKE SEPARATE PAYMENT FOR

(A) CHORE SERVICES UNDER 7 AAC 130.245;

(B) FAMILY-DIRECTED RESPITE CARE SERVICES UNDER 7 AAC 130.280;

(C) TRANSPORTATION SERVICES UNDER 7 AAC 130.290;

(D) MEALS SERVICES UNDER 7 AAC 130.295; OR

(E) SERVICES PROVIDED BY ANOTHER RESIDENT OF A FAMILY HOME HABILITATION SITE.]

7 AAC 130.265(i) is repealed and readopted to read:

(i) The department will pay for in-home support habilitation services under (h) of this section, subject to the following limitations:

(1) the department will not pay for more than 18 hours per day of in-home habilitation services from all providers combined unless the department determines that the recipient is unable to benefit from

(A) other home and community-based waiver services; or

(B) services provided by family members or community supports;

(2) the department will not make separate payment for

(A) personal care services under 7 AAC 125.010 - 7 AAC 125.199;

(B) chore services under 7 AAC 130.245;

(C) transportation services under 7 AAC 130.290;

(D) meal services under 7 AAC 130.295; or

(E) services provided by another resident of the home or by the primary unpaid caregiver.

(The existing text for (i) is presented below for the reader to compare to the proposed text)

[(i) THE DEPARTMENT WILL PAY FOR IN-HOME SUPPORT HABILITATION SERVICES UNDER (h) OF THIS SECTION, EXCEPT THAT IF A RECIPIENT IS ELIGIBLE FOR IN-HOME SUPPORT HABILITATION SERVICES, THE DEPARTMENT WILL NOT MAKE SEPARATE PAYMENT FOR

(1) PERSONAL CARE SERVICES UNDER 7 AAC 125.010 - 7 AAC 125.199;

(2) CHORE SERVICES UNDER 7 AAC 130.245;

(3) TRANSPORTATION SERVICES UNDER 7 AAC 130.290;

(4) MEAL SERVICES UNDER 7 AAC 130.295; OR

(5) SERVICES PROVIDED BY ANOTHER RESIDENT OF THE HOME OR BY THE PRIMARY UNPAID CAREGIVER.]

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.267 is repealed and readopted to read:

7 AAC 130.267. Acuity payments for qualified recipients. (a) The department will pay for additional services under this section that

(1) are provided for a recipient, qualified under (b) of this section that is receiving the following services:

(A) residential supported-living services under 7 AAC 130.255 that are assigned the procedure code described in 7 AAC 145.520(m); or

(B) group-home habilitation services under 7 AAC 130.265(f) that are assigned the procedure code described in 7 AAC 145.520(m); and

(2) are requested in accordance with (c) of this section;

(3) are determined by the department to be necessary, based upon evaluation of the supporting documentation submitted in accordance with (d) or (e) of this section; and

(4) receive prior authorization.

(b) For purposes of this section, a qualified recipient is one that

(1) needs services that exceed those authorized in the recipient's current plan of care under 7 AAC 130.217; and

(2) because of the recipient's physical condition or behavior, needs direct one-to-one support from direct care workers whose time is dedicated solely to providing services under (a)(1) of this section to that one recipient 24 hours per day, seven days per week, in all environments in which the recipient functions.

(c) To request additional services under this section, the care coordinator responsible under 7 AAC 130.217 for the recipient's plan of care must submit

(1) written documentation that

(A) describes how the recipient’s physical condition or behavior justifies the support outlined in (b) of this section;

(B) lists each intervention tried or in use to address the recipient’s physical condition or behavior, and whether the intervention was successful or unsuccessful;

(C) indicates how additional services under this section would be consistent with services approved as part of the recipient’s plan of care under 7 AAC 130.217;

(D) addresses how the acuity payment under this section would be used to improve management of the recipient’s physical condition or behavior; and

(2) the supporting evidence required under (d) or (e) of this section, as appropriate.

(d) If the recipient needs the support described in (b)(2) of this section because of the recipient's physical condition, in whole or in part, the request for additional services must include, in addition to the information required under (c) of this section,

(1) a copy of the recipient's most recent medical evaluation conducted as part of an assessment under 7 AAC 130.213 specific to the home and community-based waiver services plan of care under 7 AAC 130.217;

(2) a record of the recipient's dates of hospital admission and discharge or of other medical interventions during the 30 days immediately preceding the date of the request;

(3) a copy of the recipient's clinical record under 7 AAC 105.230(d)(6) documenting 24 hours of activity for each of the 30 days immediately preceding the date of the request; and

(4) a description of how medication administration or other recurring medical treatments are managed.

(e) If the recipient needs the support described in (b)(2) of this section because of the recipient's behavior, in whole or in part, the request for prior authorization must include, in addition to the information required under (c) of this section, a copy of the recipient's

(1) most recent medical and psychological evaluations conducted as part of an assessment under 7 AAC 130.213 specific to the home and community-based waiver services plan of care under 7 AAC 130.217; and

(2) clinical record under 7 AAC 105.230(d)(6) documenting 24 hours of activity for each of the 30 days immediately preceding the date of the request.

(f) The department will not approve additional services under this section for more than 12 consecutive months.

(g) The department may terminate authorization for services under this section at any time if the department verifies that the recipient's physical condition or behavior no longer requires additional services under this section.

(h) A provider who receives an acuity payment under this section shall

(1) provide workers to provide the services described in (b)(2) of this section; and

(2) ensure that at least one worker is awake at all times to provide those services.

(The existing text for 7 AAC 130.267 is presented below for the reader to compare to the proposed text)

[(a) THE DEPARTMENT WILL APPROVE AN ACUITY PAYMENT FOR ADDITIONAL SERVICES

(1) FOR A RECIPIENT WHO IS

(A) ELIGIBLE FOR AND RECEIVING

(i) RESIDENTIAL SUPPORTED-LIVING SERVICES UNDER

7 AAC 130.255 THAT ARE ASSIGNED THE PROCEDURE CODE DESCRIBED IN 7 AAC 145.520(m); OR

(ii) GROUP-HOME HABILITATION SERVICES UNDER 7 AAC 130.265(f) THAT ARE ASSIGNED THE PROCEDURE CODE DESCRIBED IN 7 AAC 145.520(m); AND

(B) A QUALIFIED RECIPIENT UNDER (b) OF THIS SECTION;

(2) FOR WHICH A REQUEST FOR PRIOR AUTHORIZATION IS SUBMITTED IN ACCORDANCE WITH (c) - (e) OF THIS SECTION; AND

(3) THAT RECEIVE PRIOR AUTHORIZATION.

(b) FOR PURPOSES OF THIS SECTION, A QUALIFIED RECIPIENT IS ONE WHO

(1) NEEDS SERVICES THAT EXCEED WHAT IS CURRENTLY AUTHORIZED IN THE RECIPIENT'S CURRENT PLAN OF CARE UNDER 7 AAC 130.217; AND

(2) BECAUSE OF THE RECIPIENT'S PHYSICAL CONDITION OR BEHAVIOR, NEEDS DIRECT ONE-ON-ONE SUPPORT FROM WORKERS WHOSE TIME IS DEDICATED SOLELY TO PROVIDING SERVICES UNDER (a)(1)(A) OF THIS SECTION TO THAT ONE RECIPIENT 24 HOURS PER DAY, SEVEN DAYS PER WEEK, IN ALL ENVIRONMENTS IN WHICH THE RECIPIENT FUNCTIONS.

(c) TO REQUEST PRIOR AUTHORIZATION FOR ADDITIONAL SERVICES UNDER THIS SECTION, THE CARE COORDINATOR RESPONSIBLE UNDER 7 AAC 130.217 FOR THE RECIPIENT'S PLAN OF CARE MUST SUBMIT

(1) A DESCRIPTION OF HOW, BASED UPON THE RECIPIENT'S PHYSICAL CONDITION OR BEHAVIOR, THE RECIPIENT MEETS THE REQUIREMENTS OF (b) OF THIS SECTION;

(2) A DESCRIPTION OF THE RECIPIENT'S PHYSICAL CONDITION OR BEHAVIOR THAT HAS RESULTED IN THE RECIPIENT'S NEED FOR THE ADDITIONAL SERVICES UNDER (b)(2) OF THIS SECTION;

(3) A DESCRIPTION OF EACH INTERVENTION THAT WAS TRIED OR IS IN USE TO ADDRESS THE RECIPIENT'S PHYSICAL CONDITION OR BEHAVIOR, AND A DESCRIPTION OF WHETHER EACH INTERVENTION WAS SUCCESSFUL OR UNSUCCESSFUL;

(4) A DESCRIPTION OF HOW AN ACUITY PAYMENT UNDER THIS SECTION WOULD BE USED TO MANAGE THE RECIPIENT'S PHYSICAL OR BEHAVIORAL NEEDS;

(5) A DESCRIPTION OF HOW THE ADDITIONAL SERVICES UNDER THIS SECTION ARE CONSISTENT WITH SERVICES APPROVED UNDER 7 AAC 130.217 AS PART OF THE RECIPIENT'S PLAN OF CARE; AND

(6) THE SUPPORTING EVIDENCE REQUIRED UNDER (d) OR (e) OF THIS SECTION, AS APPROPRIATE.

(d) IF THE RECIPIENT NEEDS THE SUPPORT DESCRIBED IN (b)(2) OF THIS SECTION BECAUSE OF THE RECIPIENT'S PHYSICAL CONDITION, IN WHOLE OR IN

PART, THE REQUEST FOR PRIOR AUTHORIZATION MUST INCLUDE, IN ADDITION TO THE INFORMATION REQUIRED UNDER (c)(1) - (5) OF THIS SECTION,

(1) A COPY OF THE RECIPIENT'S MOST RECENT MEDICAL EVALUATION CONDUCTED AS PART OF AN ASSESSMENT UNDER 7 AAC 130.213 SPECIFIC TO THE HOME AND COMMUNITY-BASED WAIVER SERVICES PLAN OF CARE UNDER 7 AAC 130.217;

(2) A RECORD OF THE RECIPIENT'S DATES OF HOSPITAL ADMISSION AND DISCHARGE OR OF OTHER MEDICAL INTERVENTIONS DURING THE 30 DAYS IMMEDIATELY PRECEDING THE DATE OF THE REQUEST;

(3) A COPY OF THE RECIPIENT'S CLINICAL RECORD UNDER 7 AAC 105.230(d)(6) DOCUMENTING 24 HOURS OF ACTIVITY FOR EACH OF THE 30 DAYS IMMEDIATELY PRECEDING THE DATE OF THE REQUEST; AND

(4) A DESCRIPTION OF HOW MEDICATION ADMINISTRATION OR OTHER RECURRING MEDICAL TREATMENTS ARE MANAGED.

(e) IF THE RECIPIENT NEEDS THE SUPPORT DESCRIBED IN (b)(2) OF THIS SECTION BECAUSE OF THE RECIPIENT'S BEHAVIOR, IN WHOLE OR IN PART, THE REQUEST FOR PRIOR AUTHORIZATION MUST INCLUDE, IN ADDITION TO THE INFORMATION REQUIRED UNDER (c)(1) - (5) OF THIS SECTION, A COPY OF THE RECIPIENT'S

(1) MOST RECENT MEDICAL AND PSYCHOLOGICAL EVALUATIONS CONDUCTED AS PART OF AN ASSESSMENT UNDER 7 AAC 130.213 SPECIFIC TO THE HOME AND COMMUNITY-BASED WAIVER SERVICES PLAN OF CARE UNDER 7 AAC 130.217; AND

(2) CLINICAL RECORD UNDER 7 AAC 105.230(d)(6) DOCUMENTING 24 HOURS OF ACTIVITY FOR EACH OF THE 30 DAYS IMMEDIATELY PRECEDING THE DATE OF THE REQUEST.

(f) THE DEPARTMENT WILL NOT GIVE PRIOR AUTHORIZATION UNDER THIS SECTION FOR MORE THAN 12 CONSECUTIVE MONTHS. THE DEPARTMENT MAY TERMINATE AUTHORIZATION AT ANY TIME IF THE DEPARTMENT VERIFIES THAT THE RECIPIENT'S PHYSICAL CONDITION OR BEHAVIOR NO LONGER REQUIRES ADDITIONAL SERVICES UNDER THIS SECTION.

(g) A PROVIDER WHO RECEIVES AN ACUITY PAYMENT UNDER THIS SECTION SHALL

(1) PROVIDE WORKERS TO PROVIDE THE SERVICES DESCRIBED IN (b)(2) OF THIS SECTION; AND

(2) ENSURE THAT, AT ANY TIME, AT LEAST ONE WORKER IS AWAKE TO PROVIDE THOSE SERVICES.]

(Eff. 4/1/2012, Register 201; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.270(c) is amended to read:

(c) The department will not pay for

(1) an expense associated with starting up or operating a business;

(2) supervisory activities normally provided in the business setting;

(3) services described in (b)(1) of this section while a recipient receives services under (b)(2) of this section;

(4) more than three months of services under (b)(1) of this section **during a recipient's term of eligibility for home and community-based services,** unless the home and community-based waiver services provider demonstrates that the recipient

(A) needs additional preparation for employment; or

(B) is preparing for a new job placement;

(5) accommodations routinely provided by the employer to employees; [OR]

(6) **transportation for a recipient, unless it is to or from an employment site where the recipient works in a paid position, and no other transportation is available for the recipient; or** [A SERVICE THAT IS AVAILABLE UNDER A PROGRAM FUNDED UNDER 20 U.S.C. 1400 - 1482 (INDIVIDUALS WITH DISABILITIES EDUCATION ACT) OR 29 U.S.C. 730 (REHABILITATION ACT)]

(7) a service that is available under a program funded under 20 U.S.C. 1400 - 1482 (Individuals with Disabilities Education Act) or 29 U.S.C. 730 (Rehabilitation Act).

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.275(b)(4) is amended to read:

(4) provides treatment or therapy that is planned and rendered by

(A) an individual, certified under AS 14.20.010, with a special education endorsement obtained under 4 AAC 12.330; or

(B) a professional licensed under AS 08 with expertise specific to the diagnosed problem or disorder, or by a paraprofessional supervised by that professional and licensed under AS 08 if required.

(Eff. 2/1/2010, Register 193; am 3/1/2011, Register 197; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.280 is repealed and readopted to read:

7 AAC 130.280. Respite care services. (a) The department will pay for respite care services that

(1) are provided in accordance with the department's *Respite Care Services Conditions of Participation*, adopted by reference in 7 AAC 160.900;

(2) are approved under 7 AAC 130.217 as part of the recipient's plan of care;

(3) receive prior authorization; and

(4) do not exceed the maximum number of hours and days specified in (c) of this section.

(b) The department will consider services to be respite care services if the services are provided

(1) in the following locations:

(A) the recipient's home;

(B) the private residences of the respite care provider, except as specified in (d)(2) of this section;

(C) a licensed facility specified in (d)(1) of this section; or

(D) another community setting if that setting is appropriate for the needs of the recipient and the recipient's health, safety, and welfare will not be placed at risk;

(2) because of the absence or need for relief of the following caregivers only:

(A) primary unpaid caregivers;

(B) providers of family home habilitation services under 7 AAC 130.265(b), except that the department will not pay claims for daily respite care services under (c) of this section and family home habilitation services for the same time period; and

(3) to replace the caregiver's oversight, care, and support needed by the recipient to remain in the recipient's community and to prevent risk of institutionalization; in this paragraph, "institutionalization" does not mean the temporary arrangement for respite care services in a facility specified in (d)(1) of this section.

(c) The department will not pay for respite care services that exceed the following duration limits:

(1) 520 hours of hourly respite care services per year, unless the department approves more hours because the lack of additional care or support would result in risk of institutionalization;

(2) 14 days of daily respite care services per year; for the purposes of this section, daily respite care services for the time that includes the recipient's usual nightly sleep period must be provided in the recipient's home or in the types of facilities specified in (d)(1) of this section.

(d) The department will pay under this section for respite care services subject to the following limitations:

(1) the department will pay for room and board expenses incurred during the provision of respite care services only when the room and board are provided in

(A) a nursing facility;

(B) a general acute care hospital;

(C) an intermediate care facility for individuals with intellectual or developmental disabilities (ICF/IDD);

(D) an assisted living home licensed under AS 47.32, if that home is not the recipient's residence; or

(E) a foster home licensed under AS 47.32, if that home is not the recipient's residence;

(2) notwithstanding (c)(1) of this section, the department will not pay more than the daily rate established in 7 AAC 145.520 for respite care services;

(3) the department will not pay for daily respite care services provided in a facility specified in (1) of this subsection at a rate in excess of the rate established for Medicaid providers under 7 AAC 105 - 7 AAC 160;

(4) the department will not pay for respite care services to

(A) allow a primary unpaid caregiver to work;

(B) relieve paid providers of Medicaid services, except providers of family home habilitation services under 7 AAC 130.265(b); or

(C) provide oversight for minor children, other than a recipient of home and community-based waiver services, in the home; for purposes of this subparagraph, "minor children" means unemancipated individuals under 18 years of age;

(5) the department will not pay for respite care services that are provided at the same time as

(A) other home and community-based waiver services that include care and supervision of the recipient; or

(B) personal care services under 7 AAC 125.010 - 7 AAC 125.199;

(6) the department will pay for hourly respite care services provided at the same time as the following services:

(A) chore services under 7 AAC 130.245;

(B) transportation services under 7 AAC 120.290; and

(C) meal services under 7 AAC 130.295;

(7) the department will not pay for hourly respite care services provided to recipients receiving residential supported-living services under 7 AAC 130.255.

(e) The department will pay for family-directed respite care services if the services are

(1) provided for a recipient in one of the following recipient categories:

(A) children with complex medical conditions;

(B) individuals with intellectual or developmental disabilities;

(2) provided through a home and community-based waiver services provider that

(A) is certified under 7 AAC 130.220 to provide respite care services;

(B) has on file with the department a current letter of agreement acknowledging responsibility for

(i) complying with the requirements of AS 47.05.017 with respect to an individual retained and directed by a family to provide respite care services under this subsection; and

(ii) ensuring that the retention and direction of an individual by a family to provide respite care services under this subsection is in accordance with municipal, state, and federal law pertaining to employment of that individual,

including applicable provisions of 26 U.S.C. (Internal Revenue Code), or to provisions to protect the health, safety, and welfare of the recipient;

(C) submits claims for family-directed respite care services, and

(D) pays the individuals retained by the family to provide family-directed respite care services;

(3) directed by a primary unpaid caregiver that

(A) in regard to the individuals selected to provide family-directed respite care services

(i) identifies and trains the individuals that meet the requirements for respite care services direct care workers specified in the department's *Respite Care Services Conditions of Participation*, adopted by reference in 7 AAC 160.900; and

(ii) completes and signs timesheets for individuals;

(B) provides, to the home and community-based waiver services provider that has prior authorization for the family-directed respite care services, written assurance that the primary unpaid caregiver understands the risk that the primary unpaid caregiver assumes for family-directed respite care services; and

(C) does not identify, train, or sign timesheets for individuals that provide family-directed respite care services for other recipients; and

(4) consistent with the following limitations:

(i) daily respite care services in a facility specified in (c)(1) of this section may not be provided as family-directed respite care services; and

(ii) family-directed respite care services may not be provided to relieve providers of family home habilitation services under 7 AAC 130.265(b).

(f) In this section,

(1) "daily respite care services" means respite care services not less than 12 hours and no more than 24 hours in duration;

(2) "family-directed respite care services" means respite care services provided by an individual that is

(A) retained by the family of the recipient; and

(B) paid by a home and community-based waiver services provider.

(The existing text for 7 AAC 130.280 is presented below for the reader to compare to the proposed text)

[(a) THE DEPARTMENT WILL PAY FOR RESPITE CARE SERVICES THAT

(1) ARE APPROVED UNDER 7 AAC 130.217 AS PART OF THE RECIPIENT'S PLAN OF CARE;

(2) RECEIVE PRIOR AUTHORIZATION; AND

(3) DO NOT EXCEED THE MAXIMUM NUMBER OF HOURS AND DAYS IN (c) OF THIS SECTION.

(b) THE DEPARTMENT WILL CONSIDER SERVICES TO BE RESPITE CARE SERVICES IF THEY PROVIDE ALTERNATIVE CAREGIVERS, REGARDLESS OF WHETHER THE SERVICES ARE PROVIDED IN THE RECIPIENT'S HOME OR AT ANOTHER LOCATION, TO RELIEVE

(1) PRIMARY UNPAID CAREGIVERS, INCLUDING FAMILY MEMBERS AND COURT-APPOINTED GUARDIANS;

(2) PROVIDERS OF FAMILY HOME HABILITATION SERVICES UNDER 7 AAC 130.265(b), EXCEPT AS PROVIDED IN (e)(4) OF THIS SECTION; OR

(3) FOSTER PARENTS LICENSED UNDER AS 47.32.

(c) THE DEPARTMENT WILL NOT PAY FOR RESPITE CARE SERVICES THAT EXCEED THE FOLLOWING DURATION LIMITS:

(1) 520 HOURS OF HOURLY RESPITE CARE SERVICES PER YEAR, UNLESS THE LACK OF ADDITIONAL CARE OR SUPPORT WOULD RESULT IN RISK OF INSTITUTIONALIZATION BECAUSE

(A) THE RECIPIENT HAS INADEQUATE SUPPORTS FROM UNPAID CAREGIVERS; OR

(B) APPROPRIATE OUT-OF-HOME DAILY RESPITE CARE SERVICES ARE UNAVAILABLE;

(2) 14 DAYS OF DAILY RESPITE CARE SERVICES PER YEAR.

(d) THE DEPARTMENT WILL PAY UNDER THIS SECTION FOR RESPITE CARE SERVICES SUBJECT TO THE FOLLOWING LIMITATIONS:

(1) THE DEPARTMENT WILL PAY FOR ROOM AND BOARD EXPENSES INCURRED DURING THE PROVISION OF RESPITE CARE SERVICES ONLY IF THE ROOM AND BOARD ARE PROVIDED IN

(A) A NURSING FACILITY;

(B) A GENERAL ACUTE CARE HOSPITAL;

(C) AN INTERMEDIATE CARE FACILITY FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITION (ICF/IID);

(D) AN ASSISTED LIVING HOME LICENSED UNDER AS 47.32, AND THAT HOME IS NOT THE RECIPIENT'S RESIDENCE; OR

(E) A FOSTER HOME LICENSED UNDER AS 47.32, AND THAT HOME IS NOT THE RECIPIENT'S RESIDENCE;

(2) THE DEPARTMENT WILL NOT PAY MORE THAN DAILY RATE ESTABLISHED IN 7 AAC 145.520 FOR RESPITE CARE SERVICES, WHETHER PROVIDED SINGLY OR IN COMBINATION, OTHER THAN OUT-OF-HOME DAILY RESPITE CARE SERVICES;

(3) THE DEPARTMENT WILL NOT PAY FOR OUT-OF-HOME DAILY RESPITE CARE SERVICES AT A RATE IN EXCESS OF THE RATE ESTABLISHED FOR MEDICAID PROVIDERS UNDER 7 AAC 105 - 7 AAC 160;

(4) THE DEPARTMENT WILL NOT PAY FOR RESPITE CARE SERVICES TO

(A) ALLOW A PRIMARY CAREGIVER TO WORK;

(B) RELIEVE OTHER PAID PROVIDERS OF MEDICAID SERVICES, EXCEPT PROVIDERS OF FAMILY HOME HABILITATION SERVICES UNDER 7 AAC 130.265(b); OR

(C) PROVIDE OVERSIGHT FOR ADDITIONAL MINOR CHILDREN IN THE HOME; FOR PURPOSES OF THIS SUBPARAGRAPH, "ADDITIONAL MINOR CHILDREN" MEANS UNEMANCIPATED INDIVIDUALS UNDER 18 YEARS OF AGE OTHER THAN RECIPIENTS;

(5) THE DEPARTMENT WILL PAY FOR RESPITE CARE SERVICES PROVIDED AT THE SAME TIME AS PERSONAL CARE ASSISTANTS UNDER 7 AAC 125.010 - 7 AAC 125.199 OR HABILITATION SERVICES PROVIDED UNDER 7 AAC 130.260 - 7 AAC 130.265 ONLY IF THE LACK OF ADDITIONAL CARE OR SUPPORT WOULD RESULT IN RISK OF INSTITUTIONALIZATION BECAUSE

(A) THE RECIPIENT HAS INADEQUATE SUPPORTS FROM UNPAID CAREGIVERS; OR

(B) APPROPRIATE OUT-OF-HOME DAILY RESPITE CARE SERVICES ARE UNAVAILABLE;

(6) THE DEPARTMENT WILL NOT PAY FOR HOURLY RESPITE CARE SERVICES PROVIDED TO RECIPIENTS RECEIVING RESIDENTIAL SUPPORTED-LIVING SERVICES UNDER 7 AAC 130.255.

(e) THE DEPARTMENT WILL PAY UNDER THIS SECTION FOR FAMILY-DIRECTED RESPITE CARE SERVICES SUBJECT TO THE FOLLOWING ADDITIONAL LIMITATIONS:

(1) FAMILY-DIRECTED RESPITE CARE SERVICES WILL BE PAID ONLY FOR A RECIPIENT IN ONE OF THE FOLLOWING RECIPIENT CATEGORIES:

(A) CHILDREN WITH COMPLEX MEDICAL CONDITIONS;

(B) INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES;

(2) FAMILY-DIRECTED RESPITE CARE SERVICES MUST BE PROVIDED THROUGH A HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER THAT IS CERTIFIED AND ENROLLED UNDER 7 AAC 130.220 TO PROVIDE RESPITE CARE SERVICES; PRIOR AUTHORIZATION WILL NOT BE GIVEN UNLESS THE DEPARTMENT HAS ON FILE A CURRENT LETTER OF AGREEMENT, IN WHICH THE HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER ACKNOWLEDGES RESPONSIBILITY TO

(A) COMPLY WITH THE REQUIREMENTS OF AS 47.05.017 WITH RESPECT TO AN INDIVIDUAL RETAINED AND DIRECTED BY A FAMILY TO PROVIDE RESPITE CARE SERVICES UNDER THIS SUBSECTION; AND

(B) ENSURE THAT THE RETENTION AND DIRECTION OF AN INDIVIDUAL BY A FAMILY TO PROVIDE RESPITE CARE SERVICES UNDER THIS SUBSECTION IS IN ACCORDANCE WITH MUNICIPAL, STATE, AND FEDERAL LAW

(i) APPLICABLE TO EMPLOYMENT OF THAT INDIVIDUAL,

INCLUDING APPLICABLE PROVISIONS OF 26 U.S.C. (INTERNAL REVENUE CODE); OR

(ii) TO PROTECT THE HEALTH AND SAFETY OF THE RECIPIENT;

(3) OUT-OF-HOME DAILY RESPITE CARE SERVICES MAY NOT BE PROVIDED AS FAMILY-DIRECTED RESPITE CARE SERVICES;

(4) FAMILY-DIRECTED RESPITE CARE SERVICES MAY NOT BE PROVIDED TO RELIEVE PROVIDERS OF FAMILY HOME HABILITATION SERVICES UNDER 7 AAC 130.265(b) ;

(5) PRIMARY UNPAID CAREGIVERS OF A RECIPIENT RECEIVING FAMILY-DIRECTED RESPITE CARE SERVICES MAY NOT PROVIDE THE SERVICE FOR OTHER RECIPIENTS OF FAMILY-DIRECTED RESPITE CARE SERVICES;

(6) A PRIMARY UNPAID CAREGIVER

(A) MAY IDENTIFY AND TRAIN INDIVIDUALS WHO MEET THE MINIMUM REQUIREMENTS LISTED IN THE *RESPITE CARE SERVICES CONDITIONS OF PARTICIPATION*, ADOPTED BY REFERENCE IN 7 AAC 160.900;

(B) MAY COMPLETE AND SIGN TIMESHEETS FOR INDIVIDUALS PROVIDING FAMILY-DIRECTED RESPITE CARE SERVICES; AND

(C) SHALL PROVIDE, TO THE HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER THAT HAS RECEIVED PRIOR AUTHORIZATION FOR THE FAMILY-DIRECTED RESPITE CARE SERVICES, WRITTEN ASSURANCE THAT THE PRIMARY UNPAID CAREGIVER UNDERSTANDS THE ADDITIONAL RISK THAT THE PRIMARY UNPAID CAREGIVER ASSUMES IN THE PROVISION OF FAMILY-DIRECTED RESPITE CARE SERVICES;

(7) INDIVIDUALS PROVIDING FAMILY-DIRECTED RESPITE CARE SERVICES SHALL BE PAID DIRECTLY BY THE HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER THAT RECEIVED PRIOR AUTHORIZATION FOR THOSE SERVICES.

(f) IN THIS SECTION,

(1) "DAILY RESPITE CARE SERVICES" MEANS RESPITE CARE SERVICES NO LESS THAN 12 AND NO MORE THAN 24 HOURS IN DURATION;

(2) "FAMILY-DIRECTED RESPITE CARE SERVICES" MEANS RESPITE CARE SERVICES PROVIDED BY AN INDIVIDUAL WHOM

(A) THE FAMILY OF THE RECIPIENT RETAINS; AND

(B) A HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER PAYS;

(3) "OUT-OF-HOME DAILY RESPITE CARE SERVICES" MEANS DAILY RESPITE CARE SERVICES PROVIDED IN

(A) A NURSING FACILITY;

(B) A GENERAL ACUTE CARE HOSPITAL;

(C) AN INTERMEDIATE CARE FACILITY FOR INDIVIDUALS

WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITION (ICF/IID);
(D) AN ASSISTED LIVING HOME LICENSED UNDER AS 47.32; OR
(E) A FOSTER HOME LICENSED UNDER AS 47.32.]

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.290 is repealed and readopted to read:

7 AAC 130.290. Transportation services. (a) The department will pay for transportation services that

(1) are provided in accordance with the department's *Transportation Services Conditions of Participation*, adopted by reference in 7 AAC 160.900;

(2) are approved under 7 AAC 130.217 as part of the recipient's plan of care;

(3) receive prior authorization; and

(4) are provided in a vehicle that is owned or commercially leased by an agency that is a home and community-based waiver services provider, unless otherwise approved under (b) of this section; the department will not certify, as a provider of services under 7 AAC 130.220(b)(1)(K), any agency that uses only employee- or volunteer-owned vehicles for that service.

(b) Notwithstanding (a) of this section, the department may approve transportation services in an employee- or volunteer-owned vehicle for a recipient that lives in a rural area where no other transportation options or no natural supports able to provide transportation are available; an agency that authorizes an employee or volunteer to transport a recipient in an employee- or volunteer-owned vehicle must document that

(1) the vehicle is safe and suitable for the transportation needs of the recipient;

(2) the driver is capable of transporting the recipient in a safe manner; and

(3) either the agency or the driver has automotive liability insurance for the employee- or volunteer-owned vehicle that includes coverage, in the event of an accident, for any recipient.

(c) The department will consider services to be transportation services under this section if the services enable a recipient and, if necessary, an escort that receives prior authorization under (a)(3) of this section, to travel to and return from locations where

(1) home and community-based waiver services are provided; or

(2) other services and resources are available.

(d) The department will pay for trip segments that

(1) transport a recipient from one location to another location, except incidental stops shall not constitute a location where a trip segment begins or ends; and

(2) are documented in a travel log that includes

(A) the name of the recipient and any escort;

(B) the date the service is provided;

(C) time at the beginning and end of each trip segment;

(D) the pick-up point and drop-off location for each trip segment;

(E) the mileage for each trip segment; and

(F) if the vehicle operator waits for the recipient, the time at the beginning and end of that waiting period.

(e) The department will not pay under this section for

(1) medical transportation services that are authorized under 7 AAC 120.400 - 7 AAC 120.490;

(2) transportation under 7 AAC 130.260 or 7 AAC 130.265;

(3) transportation to destinations that are over 20 miles from the recipient's residence, unless approved by the department in the recipient's plan of care; or

(4) transportation to run errands for a recipient without the recipient's presence in the vehicle.

(f) In this section,

(1) "escort" means an individual that

(A) accompanies a recipient on travel described in (c) and (d) of this section in order to meet the recipient's mobility needs; and

(B) is not another recipient, the driver of the vehicle, or another individual employed by the provider, unless that individual is providing another home and community-based waiver service or personal care services under 7 AAC 125.010 – 7 AAC 125.199 at the time that individual acts as an escort;

(2) 'incidental stop" means an interval of limited duration during which time the recipient may or may not leave the vehicle, and the vehicle operator waits for the recipient or disembarks to run an errand for that recipient while the recipient remains in the vehicle;

(3) 'trip segment" means travel to a location where the recipient disembarks for an approved purpose, and the vehicle operator

(A) leaves the recipient at that location for pick up at a later time by that or another vehicle operator; or

(B) remains at that location because the distance involved in travel to that location makes it unfeasible for that or another vehicle operator to pick up the recipient at a later time.

(The existing text for 7 AAC 130.290 is presented below for the reader to compare to the proposed text)

[(a) THE DEPARTMENT WILL PAY FOR TRANSPORTATION SERVICES THAT

(1) ARE PROVIDED IN ACCORDANCE WITH THE DEPARTMENT'S *TRANSPORTATION SERVICES CONDITIONS OF PARTICIPATION*, ADOPTED BY REFERENCE IN 7 AAC 160.900;

(2) ARE APPROVED UNDER 7 AAC 130.217 AS PART OF THE RECIPIENT'S PLAN OF CARE;

(3) RECEIVE PRIOR AUTHORIZATION; AND

(4) ARE PROVIDED IN A VEHICLE THAT IS OWNED OR

COMMERCIALLY LEASED BY AN AGENCY THAT IS A HOME AND COMMUNITY-BASED WAIVER SERVICES PROVIDER.

(b) THE DEPARTMENT WILL CONSIDER SERVICES TO BE TRANSPORTATION SERVICES UNDER THIS SECTION IF THE SERVICES ENABLE A RECIPIENT AND, IF NECESSARY, AN ESCORT THAT RECEIVES PRIOR AUTHORIZATION UNDER (a)(3) OF THIS SECTION, TO TRAVEL ROUND TRIP BETWEEN THE RECIPIENT'S RESIDENCE AND ANOTHER LOCATION WHERE

(1) HOME AND COMMUNITY-BASED WAIVER SERVICES ARE PROVIDED; OR

(2) OTHER SERVICES AND RESOURCES ARE AVAILABLE.

(c) FOR PURPOSES OF (b) OF THIS SECTION, A ROUND TRIP MAY INCLUDE INTERMEDIATE STOPS. HOWEVER, THOSE INTERMEDIATE STOPS MAY NOT BE BILLED SEPARATELY AS TRIPS UNDER (b) OF THIS SECTION.

(d) THE DEPARTMENT WILL NOT PAY UNDER THIS SECTION FOR

(1) MEDICAL TRANSPORTATION SERVICES THAT ARE AUTHORIZED UNDER 7 AAC 120.400 - 7 AAC 120.490;

(2) TRANSPORTATION UNDER 7 AAC 130.260 OR 7 AAC 130.265; OR

(3) TRANSPORTATION TO DESTINATIONS THAT ARE NOT LOCATED IN THE RECIPIENT'S COMMUNITY UNLESS APPROVED BY THE DEPARTMENT IN THE RECIPIENT'S PLAN OF CARE.

(e) IN THIS SECTION,

(1) "ESCORT" MEANS AN INDIVIDUAL THAT

(A) ACCOMPANIES A RECIPIENT ON ROUND TRIP TRAVEL DESCRIBED IN (b) AND (c) OF THIS SECTION IN ORDER TO MEET THE RECIPIENT'S MOBILITY NEEDS; AND

(B) IS NOT ANOTHER RECIPIENT, THE DRIVER OF THE VEHICLE, OR ANOTHER MEMBER OF THE PROVIDER'S STAFF;

(2) "ROUND TRIP" MEANS TRANSPORTATION FROM THE RECIPIENT'S RESIDENCE TO THE FARTHEST POINT OF TRAVEL AND RETURN FROM THAT POINT TO THE RECIPIENT'S RESIDENCE.

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am ____/____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.300(e) is amended to read:

(e) The department will consider **an** [THE] environmental modification to be complete when the department makes final payment to the provider that received prior authorization**; the department will pay for an environmental modification only upon completion except that,**

(1) to allow for the purchase of materials, supplies, and equipment for the project, the department will authorize payment of

(A) 25 percent or less of the total amount approved for the project;

and

(B) the cost of shipping that is allowed under (d)(2) of this section modification; and

(2) unless the department approves an extension of time for cause, the department will require repayment of any monies paid if the environmental modification is not completed within 90 days after the first claim is made against the service authorization or the date work is started on the property that is to be modified.

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.319(9) is repealed and readopted to read:

(9) "primary unpaid caregiver" means an individual

(A) that lives in

(i) the same unlicensed residence as a recipient and provides care for a recipient; or

(ii) a different residence and provides care for a recipient in the recipient's unlicensed residence; and

(B) provides the oversight, care, and support, needed by the recipient to prevent risk of institutionalization of that recipient, by assisting with the recipient's basic personal activities or with activities related to independent living; and

(C) does not receive payment for providing any other services for the recipient;

(The existing text for (9) is presented below for the reader to compare to the proposed text)

[(9) "PRIMARY CAREGIVER" MEANS AN INDIVIDUAL

(A) THAT LIVES IN

(i) THE SAME UNLICENSED RESIDENCE AS A RECIPIENT AND PROVIDES CARE FOR A RECIPIENT; OR

(ii) A DIFFERENT RESIDENCE AND PROVIDES CARE FOR A RECIPIENT IN THE RECIPIENT'S UNLICENSED RESIDENCE; AND

(B) ASSISTS WITH OR PROVIDES THE CARE DESCRIBED AS ACTIVITIES OF DAILY LIVING IN 7 AAC 125.030(b) AND INSTRUMENTAL ACTIVITIES OF DAILY LIVING IN 7 AAC 125.030(c);]

(Eff. 2/1/2010, Register 193; am 11/3/2012, Register 204; am 7/1/2013, Register 206; am _____/_____/2014, Register _____)
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 160.900(d)(8) is amended to read:

(8) the *Home and Community-Based Waiver Services Provider Certification Application*, dated **April 4, 2014** [MAY 2, 2013];

7 AAC 160.900(d)(34) is amended to read:

(34) the *Care Coordination Services Conditions of Participation*, dated **March 21, 2014** [MAY 2, 2013];

7 AAC 160.900(d)(44) is amended to read:

(44) the *Provider Conditions of Participation*, dated **March 21, 2014** [MAY 2, 2013];

7 AAC 160.900(d)(46) is amended to read:

(46) the *Residential Supported-Living Services Conditions of Participation*, dated **March 21, 2014** [MAY 2, 2013];

7 AAC 160.900(d)(49) is amended to read:

(49) the *Supported Employment Services Conditions of Participation*, dated **March 21, 2014** [MAY 2, 2013];

7 AAC 160.900(d)(50) is amended to read:

(50) the *Transportation Services Conditions of Participation*, dated **March 21, 2014;** [MAY 2, 2013]

7 AAC 160.900(d) is amended by adding a new paragraph to read:

(51) the *Environmental Modification Services Conditions of Participation*, dated April 4, 2014.

Eff. 2/1/2010, Register 193; am 8/25/2010, Register 195; am 12/1/2010, Register 196; am 1/1/2011, Register 196; am 1/15/2011, Register 197; am 2/9/2011, Register 197; am 3/1/2011, Register 197; am 10/1/2011, Register 199; am 12/1/2011, Register 200; am 1/26/2012, Register 201; am 3/8/2012, Register 201; am 4/1/2012, Register 201; add'l am 4/1/2012, Register 201; am 5/11/2012, Register 202; am 10/16/2012, Register 204; am 11/3/2012, Register 204; am 12/1/2012, Register 204; am 12/2/2012, Register 204; am 1/1/2013, Register 204; am 1/16/2013, Register 205; am 7/1/2013, Register 206; add'l am 7/1/2013, Register 206; am 11/3/2013, Register 208; am 1/1/2014, Register 208; am 2/2/2014, Register 209; am 3/19/2014, Register 209; am 3/22/2014, Register 209; am _____/_____/2014, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.012

The editor's note following 7 AAC 160.900 is changed to read:

The *Application for Alaskans Living Independently Waiver and Adults with Physical and Developmental Disabilities Waiver, Adult Day Services Conditions of Participation, Care Coordinator Certification Application, Care Coordination Services Conditions of Participation, Chore Services Conditions of Participation, Day Habilitation Services Conditions of Participation, Intellectual & Developmental Disabilities Registration and Review* form, *Material Improvement Reporting for ALl/APDD Waivers, Material Improvement Reporting for CCMC Waivers, Material Improvement Reporting for IDD Participants Age Three or Over, Material Improvement Reporting for IDD Participants Under the Age of Three, Home and Community-Based Waiver Services Provider Certification Application, Meal Services Conditions of Participation, Nursing Facility Level of Care Assessment Form for Children, Provider Conditions of Participation, Residential Habilitation Services Conditions of Participation, Residential Supported-Living Services Conditions of Participation, Screening Tool for Children with Complex Medical Conditions (CCMC) Waiver Program, Supported Employment Services Conditions of Participation*, [AND] *Transportation Services Conditions of Participation*, **and *Environmental Modification Services Conditions of Participation*** adopted by reference in 7 AAC 160.900(d), may be obtained by contacting the Department of Health and Social Services, Division of Senior and Disabilities Services, P.O. Box 110680, Juneau, Alaska, 99811-0680 and are posted on the Department of Health and Social Services, Division of Senior and Disabilities Services Internet website at http://dhss.alaska.gov/dsds