

**Article 1**  
**Personal Care Services**

Section

- 10. Purpose and scope of personal care services; coverage limitations.
- 12. Initial application for personal care services; reauthorization for personal care services.
- 20. Assessment; levels of assistance.
- 24. Personal care service level authorization.
- 26. Changes in personal care service level authorization.
- 28. Reporting changes.
- 30. Personal care covered services.
- 40. Personal care excluded services.
- 50. Personal care place of service.
- 60. Personal care provider certification and enrollment.
- 80. Personal care provider decertification and disenrollment.
- 90. Employment of personal care assistants; qualifications.
- 100. Safety of recipients.
- 110. Consumer-directed and agency-based personal care programs; safety of employees; termination of service.
- 120. Responsibilities of personal care assistant in a personal care agency.
- 130. Consumer-directed personal care program; personal care agencies.
- 140. Consumer-directed personal care program; recipient requirements.
- 150. Agency-based personal care program; personal care agencies.
- 160. Agency-based program; personal care assistant education and training requirements.
- 170. Agency-based personal care program; supervising registered nurse.

180. Review and appeal rights.

190. Consumer-directed and agency-based personal care programs; compliance reviews.

195. Payment for personal care services.

199. Definitions.

**7 AAC 125.010. Purpose and scope of personal care services; coverage limitations**

(a) The purpose of personal care services is to provide to a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient, as determined through a functional assessment of self-performance and physical supports.

(b) The department will only authorize and pay for personal care services that are

(1) provided to a recipient who

(A) meets the application requirements of 7 AAC 125.012; and

(B) is determined to be in need following an assessment under 7 AAC 125.020;

(2) administered in accordance with a personal care service level authorization established under 7 AAC 125.024;

(3) administered by a provider of agency-based or consumer-directed services that is chosen by the recipient and meets the requirements of 7 AAC 125.060; and

(4) provided by an individual personal care assistant who

(A) meets the requirements of 7 AAC 125.090; and

(B) is not an immediate family member or a legal representative of the recipient.

**History:** Eff. 2/1/2010, Register 193; am 3/1/2011, Register 197; am 1/26/2012, Register 201

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.012. Initial application for personal care services; reauthorization for personal care services**

(a) A recipient may apply for personal care services under 7 AAC 125.010 - 7 AAC 125.199 if the recipient

(1) is a current Medicaid recipient working in cooperation with a personal care services provider chosen by the recipient; and

(2) submits to the department

(A) a request for services; the request for services must include, on a form provided by the department, a medical diagnosis verification that is completed by a physician, physician assistant, or advanced nurse practitioner who is

(i) licensed under AS 08; or

(ii) a federal employee described in 7 AAC 105.200(c) ; and

(B) if the recipient intends to use consumer-directed personal care services, a document that identifies the recipient's legal representative and the representative's authority and responsibility in accordance with 7 AAC 125.140.

(b) A recipient of personal care services under 7 AAC 125.010 - 7 AAC 125.199 who wishes to have personal care services reauthorized must submit to the department a request for reauthorization and the items required under (a) of this section at least 60 days before the expiration of the recipient's current authorization.

(c) Upon receipt of the information required in (a) or (b) of this section, the department will schedule an assessment under 7 AAC 125.020.

**History: Eff. 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.020. Assessment; levels of assistance**

(a) The department will authorize an individual to receive personal care services only after an assessment is conducted in accordance with this section that establishes the individual's need for one of the following levels of assistance:

(1) limited assistance with at least one ADL; in this paragraph, "limited assistance" means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed;

(2) extensive assistance with at least one ADL; in this paragraph, "extensive assistance" means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity;

(3) dependent with at least one ADL or dependent with at least one IADL; in this paragraph, "dependent" means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity;

(4) independent with difficulty for at least one IADL; in this paragraph, "independent with difficulty" means the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it;

(5) needing assistance with at least one IADL; in this paragraph, "needing assistance" means that the recipient is involved in the activity, but receives help from another individual to perform the activity.

(b) The department will conduct an assessment using the *Consumer Assessment Tool*, adopted by reference in 7 AAC 160.900.

(c) An assessment completed by a personal care agency must be conducted by a registered nurse who is

(1) licensed under AS 08.68; or

(2) a federal employee described in 7 AAC 105.200(c) .

(d) The department will consider a request that an individual assessment be expedited for a recipient who is at increased risk of harm to health or safety. An expedited assessment will be reviewed only for the determination of personal care services and not for home and community-based waiver services under 7 AAC 130.200 - 7 AAC 130.319. A request for an expedited assessment must be submitted on a form provided by the department and must be supported with medical documentation. The department will expedite an assessment under this subsection if the

(1) recipient has been diagnosed with a terminal illness with a life expectancy of six months or less;

(2) recipient's primary caregiver died in the 30 days immediately preceding the date of the application for personal care services;

(3) recipient's primary caregiver is absent due to the caregiver's hospitalization or emergency travel;

(4) recipient is expected to be discharged from a general acute care hospital no later than seven days after the date of application for personal care services;

(5) recipient has been referred by the division of the department responsible for adult protective services; or

(6) recipient has been referred by the office of the department responsible for children's services.

(e) The department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL. In this subsection,

(1) "cueing" means daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;

(2) "setup" means arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;

(3) "supervision" means observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** AS 47.05.010

AS 47.07.030

#### **7 AAC 125.024. Personal care service level authorization**

(a) For each recipient, based upon that recipient's assessment conducted under 7 AAC 125.020, the department will

(1) determine the total number of hours of personal care services for which the department will pay using the *Personal Care Assistance Service Level Computation*, adopted by reference in 7 AAC 160.900; and

(2) develop a personal care service level authorization that identifies the specific ADL tasks, IADL tasks, and other services covered under 7 AAC 125.030 that the personal care assistant must complete to provide the level of assistance approved by the department.

(b) The total number of hours authorized under (a)(1) of this section may be used to provide any task or other service covered under 7 AAC 125.030 that is identified in the individual's personal care service level authorization developed under (a)(2) of this section.

(c) The department will not pay a provider for a task or other service that is not listed in 7 AAC 125.030 and is not identified in a recipient's personal care service level authorization.

(d) A recipient's personal care service level authorization or an amendment to a personal care service level authorization developed under 7 AAC 125.026 does not take effect until approved by the department.

(e) The department may authorize personal care services for any specific length of time, not to exceed a 12-month period. A request for reauthorization must be accompanied by a new assessment under 7 AAC 125.020.

**History: Eff. 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.026. Changes in personal care service level authorization**

(a) If the department confirms that a recipient has had a material change in condition, the department may increase, reduce, or terminate services or the number of hours of service authorized under 7 AAC 125.010 - 7 AAC 125.199.

(b) If a change to a personal care service level authorization is made before the end of the current authorization period,

(1) a personal care services agency must support the change by

(A) completing the form provided by the department for that purpose; and

(B) sending the department any medical or other relevant documentation of the recipient's condition that supports the change; and

(2) the department will record the change in the recipient's personal care service level authorization records.

(c) A change to a personal care service level authorization may be made

(1) to provide personal care services as needed outside the recipient's residence; and

(2) without personal observation of the recipient by the department.

(d) For purposes of this section, a material change in condition is confirmed if the department had determined in its records that

(1) the recipient's medical condition has changed since the last assessment;

(2) the recipient's living conditions have changed since the last assessment, including an improvement in the physical living environment, supportive services, or caregiver services; or

(3) the recipient was receiving personal care services

(A) based upon a medical prescription for one of the following and that prescription has not been renewed:

(i) foot care under 7 AAC 125.030(d) (5);

(ii) walking and simple exercises under 7 AAC [125.030\(b\)](#) (3)(B);

(iii) range of motion or stretching exercises under 7 AAC [125.030\(e\)](#) ;

(B) under a time-limited amendment to the recipient's personal care service level authorization and that amendment has expired; or

(C) that are no longer authorized under 7 AAC [105](#) - 7 AAC [160](#).

**History: Eff. 1/26/2012, Register 201**

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

**7 AAC 125.028. Reporting changes**

(a) The recipient shall report to the recipient's personal care agency any change that may affect the recipient's eligibility for personal care services. The report must be received no later than 15 days after the recipient knows of the change. The recipient may report the change by telephone, by facsimile transmission, by electronic mail, in writing, or in person. A change that may affect the recipient's eligibility for personal care services includes

(1) a change in place of residence or living arrangement;

(2) new personal contact information;

(3) a change in legal representation;

(4) a change of medical provider;

(5) receiving hospital, home and community-based waiver, or other health care services that may duplicate personal care services;

(6) an improvement or decline in mental, physical, or medical condition; and

(7) a change in age or marital status that would alter the recipient's eligibility for those personal care services that consist of assistance under 7 AAC [125.030\(c\)](#) so that the recipient may complete an IADL.

(b) A personal care agency shall report, on a form provided by the department, any change that occurs in the recipient's mental, physical, or medical condition that may require a change in the recipient's service level authorization or an increase or decrease in the level of service provided to the recipient. The report form must be received no later than 15 days after the personal care agency knows of the change. The personal care agency may submit the report form by facsimile transmission, by electronic mail, by United States mail, or in person.

(c) Upon receipt of a report under (a) or (b) of this section, or based upon its own determination of need, the department may conduct a new assessment of a recipient or may accept an assessment completed by the personal care agency.

**History: Eff. 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.030. Personal care covered services**

(a) The department will pay a personal care agency, whether it is enrolled in the consumer-directed or agency-based program, for the personal care services identified in this section if those services are provided in accordance with 7 AAC 125.010 - 7 AAC 125.199 and a recipient's personal care service level authorization.

(b) Personal care services include the following types of physical assistance provided to a recipient so that the recipient may complete an ADL:

(1) for the ADL of body mobility,

(A) positioning or turning in a bed or chair, if the recipient is nonambulatory;

(B) range-of-motion and stretching exercises, subject to the limitations in (e) of this section;

(2) for the ADL of transferring,

(A) moving between one surface and another, including to and from a bed, chair, or wheelchair;

(B) moving from a lying or sitting position to a standing position;

(3) for the ADL of locomotion,

(A) walking with support of a walker, cane, gait belt, braces, crutches, or manual wheelchair

(i) between locations in the recipient's home; or

(ii) outside the home to keep a medical or dental appointment;

(B) walking and simple exercises prescribed by a physician, a physician assistant, or an advanced nurse practitioner who is

(i) licensed under AS 08.68; or

(ii) a federal employee described in 7 AAC 105.200(c) ;



(4) for the ADL of dressing, the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis;

(5) for the ADL of eating and drinking, regardless of the recipient's skill,

(A) feeding through a feeding tube;

(B) enteral feeding;

(C) supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties;

(6) for the ADL of toileting,

(A) moving to and from the toilet, commode, bedpan, or urinal;

(B) transfers on and off a toilet or commode;

(C) general hygiene care of a colostomy, ileostomy, or external catheter;

(D) inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care;

(7) for the ADL of personal hygiene,

(A) washing and drying face and hands;

(B) nail care, if the recipient is not diabetic;

(C) skin care;

(D) mouth and teeth care;

(E) brushing and combing hair;

(F) shaving, when done separately from bathing;

(G) shampooing hair, when done separately from bathing;

(8) for the ADL of bathing, the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower; washing only the back and hair does not constitute bathing under this paragraph.

(c) Personal care services include the following types of physical assistance provided to a recipient who is 18 years of age or older so that the recipient may complete an IADL:

(1) for the IADL of light meal preparation, the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient and that is not the main meal of the day, subject to the limitations of (f) of this section;

(2) for the IADL of main meal preparation, the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient, subject to the limitations of (f) of this section;

(3) for the IADL of light housekeeping,

(A) picking up, dusting, vacuuming, and floor-cleaning of the living spaces used by the recipient;

(B) cleaning of the kitchen and dishes used for preparation of the recipient's meals;

(C) cleaning of any bathroom used by recipient;

(D) making the recipient's bed;

(E) trash removal;

(F) service animal care;

(4) for the IADL of laundering,

(A) changing a recipient's bed linens;

(B) in-home or out-of-home laundering of a recipient's bed linens and clothing;

(5) for the IADL, of shopping, shopping in the vicinity of a recipient's residence, not including the cost of transportation, for

(A) groceries and other household items required for the health and maintenance of the recipient, including items used by the recipient and other occupants of the recipient's residence; and

(B) prescribed drugs and medical supplies required by the recipient.

(d) In addition to the types of physical assistance set out in (b) and (c) of this section, personal care services include

(1) assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach;

(2) assisting the recipient with the administration of medication; the task may be performed only by a personal care assistant working for a consumer-directed personal care agency;

(3) taking and documenting the recipient's temperature, pulse, blood pressure, and respiration if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner, and setting up for diabetic testing and documentation;

(4) nonsterile bandage or dressing changes;

(5) prescribed foot care;

(6) prescribed oxygen therapy;

(7) minor maintenance of respiratory equipment;

(8) sterile dressing changes and wound care; dressings involving prescription medication and aseptic techniques may be provided only by a personal care assistant working for a consumer-directed personal care agency; and

(9) traveling with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff during that appointment.

(e) The department will pay for range-of-motion and stretching exercises only if those services are

(1) provided by a personal care agency enrolled in the agency-based program; and

(2) prescribed by a physician, a physician assistant, or an advanced nurse practitioner, who is

(A) licensed under AS 08; or

(B) a federal employee described in 7 AAC [105.200\(c\)](#) .

(f) The department will pay for light meal preparation and main meal preparation under (c) of this section, if the meal preparation service is

(1) not duplicated by another meal service approved under 7 AAC [130.295](#) or 42 U.S.C. 3001 - 3058ff (Older Americans Act);

(2) provided in the recipient's home; and

(3) provided in accordance with 42 U.S.C. 3030g.

(g) If a second recipient resides in the same residence as the first, the department may authorize a personal care assistant to provide assistance with an IADL for both recipients.

(h) In this section,

(1) "body mobility" means

- (A) moving a recipient to and from a lying position;
  - (B) turning a recipient from side to side; or
  - (C) positioning a recipient in a bed or chair;
- (2) "locomotion" does not include moving a recipient who is self-sufficient with locomotion once in a wheelchair.

**History: Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.040. Personal care excluded services**

(a) Except as provided in (b) of this section, personal care services reimbursable under Medicaid, in both the consumer-directed and agency-based programs, do not include the following:

- (1) application of dressings involving prescription medication and aseptic techniques;
- (2) invasive body procedures; for purposes of this paragraph, invasive body procedures include injections of medications, insertion or removal of catheters, tracheostomy care, enemas, deep suctioning, tube or other enteral feedings, medication administration, and care and maintenance of intravenous equipment;
- (3) chore services in the home;
- (4) a task that the department determines could reasonably be performed by the recipient;
- (5) respite care intended primarily to relieve a member of the recipient's household, a family member, or a caregiver other than a personal care assistant from the responsibility of caring for the recipient;
- (6) a task that is not on the recipient's personal care service level authorization that has been approved under 7 AAC 125.024;
- (7) a task that requires a sterile technique or procedure, except for sterilizing or autoclaving needed supplies and equipment that, if not for the presence of a personal care assistant, a recipient would have to perform independently;
- (8) care that requires a technical or professional skill that a state statute or regulation mandates must be performed by a health care professional licensed or certified by the state;
- (9) care of other members of the recipient's household;

(10) cleaning an area not used directly by the recipient;

(11) supervision, monitoring, cueing, transportation provided under 7 AAC [120.405](#), babysitting, social visitation, general monitoring for equipment failure, services provided under 7 AAC [130.200](#) - 7 AAC [130.319](#) (home and community-based waiver services; nursing facility and ICF/MR level of care), home maintenance, or pet care, except for a service animal;

(12) tasks that supplant or duplicate assistance offered by an individual or organization without charge or that are paid for by a third party;

(13) assistance with an IADL under 7 AAC [125.030](#) if

(A) provided by a parent or legal guardian of a minor child;

(B) provided by a spouse of the recipient; or

(C) other recipients living in the same residence receive IADL services under 7 AAC [125.010](#) - 7 AAC [125.199](#) or under 7 AAC [130.200](#) - 7 AAC [130.319](#) (home and community-based waiver services; nursing facility and ICF/MR level of care);

(14) tasks to provide necessary food, clothing, shelter, or medical attention for a minor recipient that are a parental responsibility and are considered neglect under [AS 47.10.014](#) if not performed;

(15) more than four hours a month of assistance with shopping under 7 AAC [125.030\(c\)](#) (5).

(b) In the case of a consumer-directed personal care agency, (a)(1), (7), and (8) of this section do not apply, and notwithstanding (a)(2) of this section, insertion and removal of catheters, tube or other enteral feedings, and medication administration are reimbursable under Medicaid.

(c) The department will not make separate payment for personal care assistants under 7 AAC [125.010](#) - 7 AAC [125.199](#) if the recipient receives in-home support services under 7 AAC [130.265\(b\)](#) (5).

(d) A recipient who is eligible for home and community-based waiver chore services under 7 AAC [130.245](#) is not eligible for assistance with an IADL identified in the recipient's personal care service level authorization if a home and community-based waiver services provider is willing to provide chore services to the recipient.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

**7 AAC 125.050. Personal care place of service**

(a) Personal care services may be provided only to a recipient who is living in the recipient's personal residence and meets the requirements of this section.

(b) The following living situations are specifically excluded as a recipient's personal residence for the purposes of Medicaid payment for personal care services:

- (1) a licensed skilled or intermediate care facility or hospital;
- (2) a licensed intermediate care facility for the mentally retarded;
- (3) a foster home licensed under [AS 47.32](#), except for recipients in a licensed foster home who are receiving residential habilitation services under 7 AAC [130.200](#) - 7 AAC [130.319](#);
- (4) an assisted living home licensed under AS 47.32;
- (5) a residence where personal care services are already paid in a contractual agreement;
- (6) a general acute care hospital.

(c) The department will not pay for transportation, room, or board for a personal care assistant to travel with a recipient away from the recipient's municipality of residence. However, the department will pay for a recipient's approved services for up to 30 days annually while the recipient is away from the recipient's municipality of residence, unless additional time is required based on documented medical necessity or for education not available in this state, if

- (1) the department authorizes the travel before it begins; and
- (2) as specified in the recipient's personal care service level authorization, the need cannot be met during the travel period by any means other than by being accompanied by a personal care assistant.

(d) In this section, "personal residence" means the dwelling that the recipient considers to be the recipient's established or principal home and to which, if absent, the recipient intends to return. A personal residence may be real or personal property, fixed or mobile, and located on land or water, if the living conditions are appropriate for the care of the recipient, including adequate sanitary conditions for handwashing and waste disposal.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

**7 AAC 125.060. Personal care provider certification and enrollment**

(a) To be certified and enrolled by the department as a provider of personal care assistant services, a personal care agency must meet the applicable certification criteria, including provider qualifications and program standards, set out in the department's *Personal Care Assistant Agency Certification Application Packet*, adopted by reference in 7 AAC [160.900](#), which the agency must submit to the department.

(b) The department may enter into a contract under [AS 36.30](#), a grant, or other arrangement permitted by law, with a provider or tribal health program authorizing that provider or tribal health program to provide personal care services to a specific group or in a specific geographical area.

(c) As a condition of participation, a provider of personal care services shall comply with the accounting, reporting, and cost survey requirements of 7 AAC [145.531](#) - 7 AAC [145.537](#).

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

#### **7 AAC 125.080. Personal care provider decertification and disenrollment**

(a) The department may deny enrollment or certification to, or disenroll or decertify, a personal care agency as a provider for the consumer-directed or agency-based program

(1) if the agency does not meet the requirements in the department's *Personal Care Assistant Agency Certification Application Packet*, adopted by reference in 7 AAC [160.900](#);

(2) for grounds and under procedures set out in 7 AAC [105.400](#) - 7 AAC [105.490](#);

(3) if the agency is no longer qualified for certification under 7 AAC [105](#) - 7 AAC [160](#); or

(4) if a personal care assistant does not pass a criminal history check conducted under 7 AAC [10.900](#) - 7 AAC [10.990](#), and the personal care agency does not terminate association with the individual in accordance with 7 AAC [10.960](#), unless the department grants a variance under 7 AAC [10.935](#).

(b) Providers that are disenrolled or decertified by the department under (a)(2) or (3) of this section may appeal that decision under 7 AAC [105.460](#).

**History:** Eff. 2/1/2010, Register 193; am 8/25/2010, Register 195

**Authority:** [AS 47.05.010](#)

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.340

AS 47.07.030

**7 AAC 125.090. Employment of personal care assistants; qualifications**

(a) To be employed as a personal care assistant in either the consumer-directed program or the agency-based program, a personal care assistant

- (1) must be at least 18 years of age;
- (2) must meet all requirements for the position as set out in 7 AAC 125.010 - 7 AAC 125.199;
- (3) must be individually enrolled with the department;
- (4) must pass a criminal history check requested under (c) of this section unless the department grants a variance under 7 AAC 10.935;
- (5) may not have been denied a health care provider license or certification for a reason related to patient services described in 7 AAC 105 - 7 AAC 160, or ever had a license or certification revoked; and
- (6) must be able independently to assist the recipient with the specific ADL under 7 AAC 125.030 and services provided to a recipient.

(b) To be a personal care assistant working in the agency-based program, an individual must

- (1) submit three letters of reference from individuals who
  - (A) are not employed by the same personal care agency;
  - (B) are not under the individual's supervision;
  - (C) have known the personal care assistant for at least three years; and
  - (D) attest to the personal care assistant's good character and ability to meet the performance requirements of a personal care assistant; and
- (2) submit evidence of having met the education and training requirements of 7 AAC 125.160.



(c) A personal care agency is subject to the applicable requirements of [AS 47.05.300](#) - 47.05.390 and 7 AAC [10.900](#) - 7 AAC [10.990](#) (barrier crimes, criminal history checks, and centralized registry). The personal care agency shall submit to the department a request for a criminal history check for each personal care assistant as required under 7 AAC [10.910](#). The department will not pay for services provided by a personal care assistant

(1) for whom a criminal history check was not requested as required under 7 AAC [10.900](#) - 7 AAC [10.990](#); or

(2) who does not pass a criminal history check under 7 AAC [10.900](#) - 7 AAC [10.990](#); however, except as restricted by applicable federal law, the department will not withhold payment if it grants a provisional valid criminal history check under 7 AAC [10.920](#) or a variance under 7 AAC [10.935](#).

(d) A personal care assistant employed by a consumer-directed agency must provide proof to the employing agency of having and maintaining a valid certificate in

(1) first aid issued by the American Red Cross, American Heart Association, or other agency approved by the department; and

(2) cardiopulmonary resuscitation (CPR) issued by the American Red Cross, American Heart Association, or other agency approved by the department.

(e) The department may waive, for up to six months, the first aid or CPR requirements of 7 AAC [125.160\(a\)](#) and the first aid or CPR requirements of (d) of this section, if a personal care assistant is unable to attend the first aid or CPR courses, or obtain the first aid or CPR certificates due to reasonable cause or excusable neglect. The personal care assistant must request a waiver in writing, to the department, and must include a statement explaining the reasonable cause or excusable neglect. If the department grants a waiver, the department may prescribe an alternative method of compliance with the requirements.

(f) In this section, "reasonable cause or excusable neglect" includes

(1) medical emergency;

(2) weather; and

(3) unavailability of classes in the community.

**History:** Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199

**Authority:** [AS 47.05.010](#)

[AS 47.05.017](#)

[AS 47.05.300](#)

AS 47.05.310

AS 47.05.320

AS 47.05.340

AS 47.07.030

**7 AAC 125.100. Safety of recipients**

(a) An agency or an employee of an agency in either the consumer-directed or agency-based program who has reasonable cause to believe that a recipient of any service rendered under 7 AAC 125.010 - 7 AAC 125.199 is subject to abuse or coercion of any kind, shall report that belief to the department immediately in accordance with AS 47.17.020 and AS 47.24.010 . An agency or employee is also subject to the reporting requirements of 7 AAC 10.955(c) for the centralized registry established under 7 AAC 10.955.

(b) If an immediate termination of services under 7 AAC 125.110 appears likely to put a recipient at risk of harm, the agency shall

(1) include a statement to that effect in its notice to the department for referral of the recipient to adult protective services or the office of children's services within the department; and

(2) promptly call the department's adult protective services hotline or the child abuse hotline.

**History: Eff. 2/1/2010, Register 193**

**Authority:** AS 47.05.010

AS 47.05.330

AS 47.07.030

**Editor's note:** The hotline number for the department's adult protective services is (800) 478-9996. The child abuse hotline number for the department is (800) 478-4444.

**7 AAC 125.110. Consumer-directed and agency-based personal care programs; safety of employees; termination of service**

If it appears to a consumer-directed agency or to an agency-based agency that a recipient is putting an employee of that agency at risk of harm, including financial harm, in providing personal care service, the agency may immediately terminate service to that recipient, upon giving notice to the department and to the recipient.

**History: Eff. 2/1/2010, Register 193**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.120. Responsibilities of personal care assistant in a personal care agency**

(a) A personal care assistant employed by a personal care agency shall maintain a contemporaneous service record for Medicaid billing for each recipient for whom that assistant provides personal care services. The record must include

(1) documentation of services performed under the personal care service level authorization, including case notes, frequency, scope, and duration;

(2) any changes in the recipient's personal care service level authorization prepared under 7 AAC 125.024 and approved by the department;

(3) a copy of the personal care service level authorization signed by, or bearing the legal mark of, the recipient or the recipient's legal representative and the department or its designee;

(4) a time sheet recording the date, time, and length of each visit and the services provided during each visit; and

(5) the signature or legal mark of the recipient or the recipient's legal representative on each time sheet, verifying that services were provided as reported by the personal care assistant.

(b) If a recipient changes personal care assistants or discontinues personal care services, the former personal care assistant shall deliver the record required by (a) of this section to the appropriate personal care agency no more than two days after the date of the change or discontinuation.

(c) If a personal care assistant terminates employment, the personal care assistant shall deliver the record required by (a) of this section to the appropriate personal care agency no more than two days after the date of termination.

(d) A personal care assistant may not

(1) accept payment in any form from a recipient for any Medicaid-reimbursable service; or

(2) solicit clients for personal care services.

(e) A personal care assistant shall keep all information concerning a recipient confidential in accordance with P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996).

(f) A personal care assistant is subject to the reporting requirements of AS 47.17.020 and AS 47.24.010.

(g) If a personal care assistant is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905,

(1) the personal care assistant shall inform the personal care agency no more than 24 hours, or no later than close of business the next business day, whichever is sooner, after the date that the personal care assistant was charged, convicted, found not guilty by reason of insanity, or adjudicated as a delinquent; and

(2) the personal care agency shall notify the department as required under 7 AAC 10.925(b) .

(h) A personal care assistant shall notify the personal care agency no more than 10 days after a change in the personal care assistant's

(1) name;

(2) license, certification, or registration status; or

(3) mailing address, physical address, or telephone number.

(i) In this section, "case notes" means progress notes documented after services are provided that

(1) include how the recipient responded to care;

(2) identify any changes, improvement, or decline in the recipient's health, safety, or welfare, including changes in physical or mental conditions; and

(3) are dated, signed by a personal care assistant, and contained in the recipient's service record.

**History: Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.05.310

AS 47.05.320

AS 47.05.340

AS 47.07.030

**7 AAC 125.130. Consumer-directed personal care program; personal care agencies**

(a) A consumer-directed personal care agency shall, in addition to meeting the requirements under 7 AAC 125.010 - 7 AAC 125.199, review a recipient's needs semiannually in the recipient's home. If the recipient resides in a community not accessible by road or air service, a consumer-directed personal care agency shall arrange for telephone, radio, or, if feasible, in-

person contact with the recipient and the personal care assistant to the extent allowed by the recipient's personal care service level authorization and the condition of the recipient, and request that the department waive the residence visitation requirements of this section if necessary. If the semiannual in-person visitation is waived, an in-person visitation must occur annually.

(b) As an employer, an agency shall collect and verify consumer-directed personal care assistants' time sheets and submit claims to the department. Individual personal care assistants employed by an agency are not responsible for submitting their own claims.

(c) Before the agency submits the application materials required under 7 AAC 125.060, the administrator of a personal care agency in the consumer-directed program shall attend a department orientation.

(d) A newly employed administrator of an existing consumer-directed program shall attend a department orientation no more than six months after the date of hire by the personal care agency, if the department does not have documentation that any other current employee of the personal care agency has attended a mandatory department orientation.

(e) A recipient who, because of lack of capacity under 7 AAC 125.140(a), has been terminated from the consumer-directed program by the consumer-directed agency that has been providing services to the recipient is eligible to transfer to, and to receive personal care services through, an approved personal care agency in the agency-based program. Except as provided in 7 AAC 125.110, and at least 30 days before the date of termination, the agency terminating services to a recipient shall give the recipient written notice of the termination and of the recipient's eligibility to apply to the department for inclusion in the agency-based program.

(f) For the consumer-directed program only, the agency and either the recipient or the legal representative shall develop a backup plan that

(1) identifies the extent to which the agency or recipient is responsible for obtaining the personal care services authorized in the recipient's personal care service level authorization if the recipient's regularly scheduled personal care assistant is unable to provide those services; and

(2) includes a contingency plan that

(A) defines the agency's and the recipient's responsibilities to work with and educate a recipient about a plan of action to ensure the health and welfare of the recipient if the recipient's regularly scheduled personal care assistant is unable to provide personal care services and other personal care services are not available through the backup plan; and

(B) informs the recipient of the potential risks involved.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.140. Consumer-directed personal care program; recipient requirements**

(a) To qualify for personal care services from a consumer-directed program, a recipient must have a health-related condition that results in the need for personal care services, and either the recipient or the recipient's legal representative must be capable and willing to

(1) supervise the personal care assistant;

(2) demonstrate a capacity for making choices about ADL under 7 AAC 125.030, understand the impact of those choices, and assume the responsibility of those choices;

(3) designate a consumer-directed personal care agency as responsible to fulfill the responsibilities of 7 AAC 125.130 on behalf of the recipient;

(4) cooperate with the department staff or designee in the review of the recipient's personal care service level authorization;

(5) cooperate with the department staff or designee, and with other state and federal oversight agencies, in conducting compliance reviews, investigations, or audits;

(6) negotiate a recipient contract with the consumer-directed personal care agency;

(7) specify the training requirements of the personal care assistant and assure that the specified training has been received; and

(8) obtain a physician's, a physician assistant's, or an advanced nurse practitioner's prescription regarding the recipient's home exercise or range-of-motion program under 7 AAC 125.030(a)(3)(G) or (b).

(b) A recipient or the recipient's legal representative

(1) is primarily responsible for the scheduling, training, and supervising of the personal care assistant; and

(2) has the right to terminate the personal care assistant providing services to that recipient.

(c) A recipient's legal representative must be

(1) an unpaid care provider involved in the day-to-day care of the recipient; and

(2) managing the recipient's care, and capable of evaluating the care, as it occurs in the home.

(d) A recipient or a recipient's legal representative must notify the personal care agency no more than five days after the date that the service needs of the recipient change or the name or the address of the recipient or the recipient's legal representative changes.

(e) If a recipient is found to be cognitively incapable of managing the recipient's own care as shown in the assessment under 7 AAC 125.020, the recipient may receive personal care services from an agency-based program only. To receive or continue receiving personal care services from a consumer-directed program, a recipient must obtain a legal representative or submit, on a form provided by the department, documentation from a licensed medical provider stating that the recipient is able to meet the requirements for managing the recipient's own care.

(f) For the purposes of this section, "licensed medical provider" includes a tribal health care provider who is employed by the federal government, assigned to a tribal health program, and licensed to practice in any jurisdiction.

**History: Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.150. Agency-based personal care program; personal care agencies**

(a) A personal care agency in the agency-based program may provide personal care services for a recipient who does not yet have a personal care service level authorization approved by the department under 7 AAC 125.024, if the recipient

(1) is being or has been discharged from a general acute care hospital or a nursing facility;

(2) has a discharge plan or a physician's confirmation of diagnosis and request for personal care services to begin immediately upon discharge from a general acute care hospital or a nursing facility, and home health services are not available or indicated; and

(3) has a plan to have an assessment done by the department or its designee no more than three days after discharge from a general acute care hospital or nursing facility; the three-day period may be extended if the department or its designee is not available to conduct the assessment during the three-day period.

(b) A personal care agency in the agency-based program may provide personal care services for a recipient who does not yet have a personal care service level authorization approved by the department under 7 AAC 125.024, if the recipient's primary caregiver is absent due to an emergency and lack of personal care services will result in immediate hospitalization or placement in a nursing facility. The recipient must have an assessment done by the department or its designee no more than three days after the emergency caregiver absence occurs. The three-day period may be extended if the department or its designee is not available to conduct the assessment during the three-day period.

(c) A personal care agency in the agency-based program may deny an application for employment of a personal care assistant for any reason subject to sanction under 7 AAC 105.400.

(d) Before the agency submits the application materials required under 7 AAC 125.060, the administrator of a personal care agency in the agency-based program shall

- (1) attend a department orientation;
- (2) establish the agency's policy on termination of services to be provided to recipients; and
- (3) establish a grievance procedure for employees.

(e) A newly employed administrator of an existing agency-based program shall attend a department orientation no more than six months after the date of hire by the personal care agency, if the department does not have documentation that any other current employee of the personal care agency has attended a mandatory department orientation.

**History: Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.160. Agency-based program; personal care assistant education and training requirements**

(a) A personal care assistant in the agency-based program must have and maintain a valid certificate in first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross, American Heart Association, or other agency approved by the department. A personal care assistant must also

- (1) hold an active license as a nurse in this state under AS 08.68;
- (2) hold an active certification as a certified nurse aide in this state under AS 08.68;
- (3) hold an active certification as a community health aide III or IV or a community health practitioner by the Alaska Community Health Aide Program Certification Board;
- (4) have satisfactorily completed training as specified in (b) of this section and passed a standardized competency test approved by the department; or
- (5) have had training or experience equivalent to the training specified in (b) of this section during the five-year period immediately preceding application to work in the program, and passed a standardized competency test approved by the department.



(b) Training referred to in (a)(4) or (5) of this section must be approved by the department, must be provided by a nurse licensed under [AS 08.68](#), and must provide at least 40 hours of instruction in the following subject areas:

- (1) infection control in the home;
- (2) bowel and bladder care;
- (3) basic nutrition and food planning and preparation;
- (4) procedures for physical transfers, including emergency evacuation of physically disabled persons and nonambulatory persons;
- (5) assistance with self-administered medication;
- (6) procedures for taking blood pressure, temperature, pulse, and respiration;
- (7) understanding and working with children, the elderly, persons with physical or developmental disabilities, persons with communicable diseases, and persons with physical or mental illnesses;
- (8) practical knowledge of body systems, body mechanics, body disorders and diseases, and the observation of body functions;
- (9) death and dying;
- (10) practical skills and use of equipment necessary to perform the tasks identified in 7 AAC [125.030\(b\)](#) ;
- (11) legal requirements affecting personal care assistants, including record keeping under 7 AAC [105.230](#), confidentiality, personal care assistant program responsibilities as set out in 7 AAC [105](#) - 7 AAC [160](#), medical assistance fraud under [AS 47.05.210](#) , and reporting of harm under [AS 47.17.020](#) - 47.17.022 and AS 47.24;
- (12) universal precautions; for purposes of this paragraph, "universal precautions" means the infectious control precautions that are recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention to be used to prevent the transmission of blood-borne germs such as human immunodeficiency virus and hepatitis B virus;
- (13) infection control.

(c) The department may allow payment for services provided by an individual who has performed duties similar to those of a personal care assistant under 7 AAC [125.010](#) - 7 AAC [125.199](#), has completed at least 16 hours of training in the areas listed in (b) of this section, and whose job performance has been found satisfactory by the appropriate personal care agency,

based upon references or other verification, but whose training does not meet the requirements of this section, if that individual

(1) is otherwise qualified to act as a personal care assistant under 7 AAC 125.090;

(2) provides proof of enrollment in training that, no more than four months after beginning employment as a personal care assistant, will qualify the individual to meet the requirements of (b) of this section; and

(3) ensures that the personal care agency provides proof that the individual has successfully completed the 16 hours of training required under this subsection to enable that individual to be eligible for payment as a personal care assistant.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** AS 47.05.010

AS 47.07.030

**7 AAC 125.170. Agency-based personal care program; supervising registered nurse**

(a) A personal care agency in the agency-based program shall retain a supervising registered nurse, licensed under AS 08.68, to perform the following duties:

(1) obtain from the department prior authorization to implement the personal care service level authorization for each recipient;

(2) at least once every six months perform, or supervise the performance of, a review of the recipient's services, including

(A) interviewing the recipient at the recipient's residence to assure services are provided and meeting the recipient's needs;

(B) evaluating the service records, including time sheets prepared by the recipient's personal care assistant;

(C) verifying in writing that the services provided are consistent with the recipient's personal care service level authorization;

(D) determining whether progress is being made toward achieving the service goal; and

(E) notifying the department of any recommended changes in the number of personal care service hours and the reasons for the recommended changes;

(3) if the recipient resides in a community not accessible by road or air service, arrange for telephone, radio, or, if feasible, in-person contact with the recipient and the personal care

assistant to the extent allowed by the recipient's personal care service level authorization and the condition of the recipient, and request that the department waive the residence visitation requirements of this section if necessary; if the six-month, in-person visitation is waived, an in-person visitation must occur annually;

(4) put written provisions in the recipient's file for emergency situations that the personal care assistant may encounter;

(5) maintain communications with the recipient, the recipient's physician, if any, and the personal care assistant;

(6) maintain a service record for each recipient that includes a

(A) copy of each personal care service level authorization, assessment, and evaluation made for the duration of care, including changes made under 7 AAC [125.020](#) and 7 AAC [125.024](#);

(B) copy of the personal care assistant's time sheets; and

(C) record of all contacts with the recipient, the recipient's health care provider, if any, and the personal care assistant.

(b) A supervising registered nurse under (a) of this section is subject to the reporting requirements of [AS 47.17.020](#) and [AS 47.24.010](#).

(c) For purposes of this section, "supervising" means implementing and overseeing the personal care service level authorization for a recipient in accordance with this section. A supervising nurse is not required to perform administrative or personnel functions such as hiring, disciplining, scheduling, or terminating a personal care assistant.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201



**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

### **7 AAC 125.180. Review and appeal rights**

(a) A recipient who is terminated from a consumer-directed or agency-based program may challenge that termination through the agency's grievance procedure, as the agency documented that procedure in the application materials required under 7 AAC [125.060](#).

(b) If the assessment under 7 AAC [125.020](#) shows that an individual is not capable of managing consumer-directed services because of a lack of capacity as provided in 7 AAC [125.140](#), or if a person is terminated from a consumer-directed program because the individual lacks capacity to manage personal care services, the individual may appeal that decision under 7 AAC [49](#).

(c) If a service authorized by the personal care service level authorization is reduced, terminated, or denied, the recipient may appeal that decision under 7 AAC [49](#).

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

**7 AAC 125.190. Consumer-directed and agency-based personal care programs; compliance reviews**

In both the consumer-directed and agency-based programs, the department, with recipient participation, will conduct compliance reviews of the personal care agencies on a biennial basis and at other times determined necessary by the department. The reviews must include evaluation of

- (1) service delivery;
- (2) service authorization;
- (3) records maintenance;
- (4) financial accountability; and
- (5) recipient satisfaction.

**History:** Eff. 2/1/2010, Register 193

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)

**7 AAC 125.195. Payment for personal care services**

(a) The department will only provide Medicaid payment for personal care services that are performed in accordance with 7 AAC [125.010](#) - 7 AAC [125.199](#) and applicable federal and state law.

(b) The department will base payment on the total time documented by a personal care assistant in which the personal care assistant provided the services and tasks covered under 7 AAC [125.030](#) and in accordance with the recipient's approved personal care service level authorization under 7 AAC [125.024](#).

(c) Repealed 1/26/2012.

(d) The department will pay a personal care agency for providing personal care services at the rate identified in 7 AAC 145.500. At least 50 percent of the annual total payment made by the department to a personal care agency for personal care services must be spent on compensation for personal care assistants.

(e) A personal care assistant's rendering provider identification number must be submitted with each claim that the personal care agency submits for Medicaid payment from the department.

**History: Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201**

**Authority:** AS 47.05.010

AS 47.07.030

### **7 AAC 125.199. Definitions**

In 7 AAC 125.010 - 7 AAC 125.199, unless the context requires otherwise,

- (1) "ADL" means activities of daily living;
- (2) "agency-based program" means a program to provide personal care services to a recipient who is unable to, or who chooses not to, take responsibility for managing those services;
- (3) "consumer-directed program" means a program to provide personal care services to a recipient who takes, or whose legal representative takes, responsibility for managing those services;
- (4) "CPR" means cardiopulmonary resuscitation;
- (5) "health care professional" means a physician, a physician assistant, a nurse practitioner, a registered nurse, an occupational therapist, or a clinical social worker;
- (6) "IADL" means instrumental activities of daily living;
- (7) "immediate family member of the recipient" means a relative of the recipient with a duty to support the recipient under state law;
- (8) "legal representative" means a recipient's
  - (A) agent under a power of attorney authorizing the person to make health care decisions;
  - (B) parent, if the recipient is a minor; or
  - (C) legal guardian;
- (9) repealed 1/26/2012;

(10) repealed 1/26/2012;

(11) repealed 1/26/2012;

(12) "service animal" means an animal trained to assist a physically or mentally challenged person, and certified by a school or training facility for service animals as having completed that training;

(13) "solicitation" means an attempt to encourage a recipient to acquire personal care services directly from a personal care assistant for gain or profit directly by the personal care assistant or the personal care assistant's employing agency;

(14) "personal care service level authorization" means the authorization developed under 7 AAC [125.024](#), with any amendment under 7 AAC [125.026](#), and approved by the department.

**History:** Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201

**Authority:** [AS 47.05.010](#)

[AS 47.07.030](#)