

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES



## PROPOSED CHANGES TO REGULATIONS

**7 AAC 125.010-.199.**

**Medicaid Coverage; Personal Care Services**

**7 AAC 160.900**

**Medicaid Program; General Provisions.  
Requirements adopted by reference.**



***PUBLIC REVIEW DRAFT***

***June 17, 2016***

**COMMENT PERIOD ENDS: September 22, 2016**

*Please see the 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paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.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

**Title 7 Health and Social Services.****Chapter 125****Medicaid Coverage; Personal Care Services and Home Health Care Services****Article 1****Personal Care Services**

7 AAC 125.010 is repealed and readopted to read:

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

(a) The purpose of 7 AAC 125.010 - 7 AAC 125.195 is to establish standards, requirements, and procedures for the personal care services program.

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

(1) provided to a Medicaid recipient that

(A) experiences functional limitations that

(i) are the result of the recipient’s physical condition;

(ii) are evident during assessment of the recipient using the *Consumer Assessment Tool* adopted by reference in 7 AAC 160.900; and

(iii) cause the recipient to be unable to perform the activities specified in 7 AAC 125.030;

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

(C) following an assessment under 7 AAC 125.020 is determined, because of the recipient's functional limitations, to need a level of assistance specified in 7 AAC 125.020 with

(b);

(i) activities of daily living (ADLs) specified in 7 AAC 125.030

(ii) instrumental activities of daily living (IADLs) specified in 7 AAC 125.030 (c); or

(iii) other activities specified in 7 AAC 125.030 (d).

(2) administered in accordance with a service level authorization for personal care services established under 7 AAC 124.024;

(3) administered by a provider, certified in accordance with 7 AAC 125.060, that is chosen by the recipient to provide the recipient's agency-based or consumer-directed personal care services; and

(4) provided by a personal care assistant that

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

(B) is not a member of the recipient's immediate family, the recipient's representative, or the representative's designee that was appointed in accordance with 7 AAC 125.100 (c), unless an individual named in this paragraph is a court-appointed guardian to a ward and a court authorizes the guardian under AS 13.26.145 (c) to provide personal care services.

(c) Notwithstanding (b) of this section, the department will not conduct an assessment if, based on a review of the recipient's application submitted in accordance with 7 AAC 125.012, the department finds that the recipient

(1) does not describe a physical condition that affects the recipient's capacity to perform the activities that are covered personal care services under 7 AAC 125.030 or does not indicate specific activities for which the recipient needs physical assistance;

(2) has submitted an application in the previous 365 day period, but does not describe the occurrence of a material change that meets the requirements of 7 AAC 125.012 (b);

(3) lives in a location where personal care services are not available, or cannot be secured from an individual that is qualified and willing to provide physical assistance for the recipient through a consumer-directed personal care services program;

(4) lives in a residence that does not meet the requirements of 7 AAC 125.050 (a);

(5) requests physical assistance only with IADLs that are the responsibility of an immediate family member under 7 AAC 125.040 (11)(A);

(6) requests assistance only with IADLs, but shares a residence with other recipients, and the requested assistance would duplicate services as specified in 7 AAC 125.040 (11)(B);

(7) has natural supports that meet the recipient's needs for physical assistance with the activities in 7 AAC 125.030; or

(8) is a child that requests physical assistance with activities that fall within the range of activities a legally responsible parent or guardian would perform on behalf of a same-age child in accordance with AS 47.10.014, and that child is

(A) under 6 years of age; or

(B) 6 to 18 years of age, unless the department determines, based on the application of that 6 to 18 year child, that

(i) the need for assistance with ADLs or the activities specified in 7 AAC 125.030 (d) is related solely to the child's disability, and is not due primarily to the child's age; and

(ii) the frequency, scope, and duration of assistance required by the child is not typical of a same-age child that does not have a disability.

(Eff. 2/1/2010, Register 193; am 3/1/2011, Register 197; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.012 is repealed and readopted to read:

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

(a) The department will review in any 365 day period one application for personal care services for a recipient that qualifies under 7 AAC 125.010, except as provided in (b) of this section.

(b) A recipient, determined not to qualify for personal care services on the basis of the recipient's application, may reapply in the 365 day period specified in (a) of this section only if a material change in the recipient's physical condition occurred after that determination; in this section, "material change" means an alteration in the physical condition of sufficient significance that the department is likely to reach a different decision regarding the recipient's need for physical assistance with ADL's, IADLs, and other covered activities.

(c) A recipient may apply for personal care services under 7 AAC 125.010 - 7 AAC 125.199 if that individual

(1) is a current Medicaid recipient;

(2) completes an application on a form provided by the department, with the assistance of

(A) a provider of personal care services that is certified and enrolled under 7 AAC 125.060; or

(B) the department's designee;

(3) reviews with the provider or department designee, and completes by signing, a rights and responsibilities form provided by the department; the provider or department designee must retain the form in the recipient's file, and provide a copy to the recipient; and

(4) submits to the department a complete application that includes

(A) a release of information, on a form provided by the department;

(B) current information that is not older than one year prior to the date of the application and is in the form of

(i) verification of the recipient's physical condition specified in 7 AAC 125.010 (b)(1)(A); the verification must be submitted on a form provided by the department and must be completed by a physician, physician assistant, or advanced nurse practitioner that is licensed under AS 08, or a federal employee described in 7 AAC 105.200 (c); and

(ii) records maintained under 7 AAC 105.230 (d) that support the recipient's diagnosis and need for physical assistance with ADLs, IADLs, or other services identified in 7 AAC 125.030; and

(C) if the recipient has a representative that will manage the recipient's personal care services, a document that identifies the recipient's representative and that representative's authority and responsibility.

(d) A recipient that wishes to have personal care services reauthorized must submit to the department a complete application and the items required under (c) of this subsection, not more than 60 days before the expiration of the recipient's current service level authorization.

(e) Except as provided in 7 AAC 125.020, the department may reauthorize personal care services, without a reassessment of the recipient's functional capacity under 7 AAC 125.020, if the recipient documents to the department's satisfaction, in the application submitted in accordance with this section, that the recipient

(1) has a chronic or permanent physical condition that is stable and predictable; and

(2) has experienced no changes in that physical condition that would affect the recipient's level of assistance, established by the previous assessment under 7 AAC 125.020, or in the need for physical assistance with the activities specified in the current service level authorization developed in accordance with 7 AAC 125.024.

(Eff. 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.020 is repealed and readopted to read:

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

(a) Except as specified in 7 AAC 125.010 (d), the department, using the *Consumer Assessment Tool* adopted by reference in 7 AAC 160.900,

(1) will conduct an assessment of a recipient for

(A) an initial application, if a review of the materials, required under 7 AAC 125.012 (c), indicate the recipient qualifies under 7 AAC 125.010;

(B) an application for reauthorization under 7 AAC 125.012 (d) or for an amendment of the recipient's service level authorization under 7 AAC 125.026, if a review of materials submitted indicates that reassessment is necessary to confirm the need to continue the recipient's level of assistance with the activities specified in recipient's current service level authorization; or

(C) quality assurance purposes, if the recipient is

(i) selected at random for a quality assurance review; or

(ii) receiving services through a personal care services agency that is subject to audit, program review, or investigation; and

(2) may conduct an assessment of the recipient in the following circumstances:

(A) the recipient failed to notify the department, in accordance with 7 AAC 125.028, of a change that could affect the recipient's service level authorization;

(B) the department learns that the recipient, the recipient's representative, the representative's designee, or the recipient's personal care services agency misrepresented the recipient's physical condition, or need for personal care services, for the purpose of obtaining services that are not medically necessary or for which the recipient does not qualify; or

(C) the department determines it is necessary in order to maintain the integrity and fiscal viability of the personal care services program.

(b) The department will authorize personal care services for a recipient if, after an assessment conducted in accordance with this section, the department determines that

(1) the recipient needs

(A) at least, limited assistance with one ADL;

(B) supervision, if the recipient's need is established in accordance with 7 AAC 125.030 (b)(5)(C); or

(C) at least, needing assistance with an IADL; and

(2) those needs cannot be met by the recipient's representative, immediate family members, or natural supports; in this paragraph, the levels of assistance have the meaning specified in the *Consumer Assessment Tool*.

(c) The department will evaluate a request for expedited consideration if the request is submitted, on a form provided by the department, with a complete application as specified in 7 AAC 125.012 or with a request for amendment of the recipient's service plan in accordance with 7 AAC 125.026; the department will conduct an assessment if the department determines, on the basis of the request and the application or amendment, that the applicant has no natural supports to meet the applicant's needs and the applicant qualifies because of

(1) a diagnosis of terminal illness with a life expectancy of six months or less;

(2) imminent or recent discharge from a general acute care hospital or nursing facility; the recipient must submit the application not later than seven days after the date of discharge;

(3) an unplanned absence of the primary caregiver due to a medical or family emergency or to hospitalization;

(4) the declining health of the primary caregiver that makes that caregiver unable to continue to provide care for the applicant;

(5) the death of the primary caregiver 30 or fewer days before the date of the application;

(6) a referral from the departmental office responsible for adult protective services or children's services; or

(7) a request by the personal care services agency for a time-limited increase in personal care services, not to exceed six consecutive weeks, to address a recipient's immediate need if that need is related to the recipient's functional capacity to perform ADLs, IADLs, or other services covered by 7AAC 125.030.

(d) The department will not authorize personal care services for a recipient if the assessment, performed in accordance with this section, establishes that the recipient

(1) does not need the level of assistance indicated in 7 AAC 125.020 (b); or

(2) needs assistance only with cueing or supervision, except for supervised eating under 7 AAC 125.030 (b)(5)(C), in order to perform an ADL, IADL, or other covered service specified in 7 AAC 125.030; in this paragraph, cueing and supervision have the meaning specified in the *Consumer Assessment Tool*.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am 11/3/2012, Register 204; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.024 is repealed and readopted to read:

**7 AAC 125.024. Personal care services level authorization and reauthorization**

(a) For each recipient, based upon the assessment conducted in accordance with 7 AAC 125.020, the department will

(1) determine the total time for personal care services for which the department will pay using the *Personal Care Services Service Level Computation*, adopted by reference in 7 AAC 160.900, adjusted by the following factors

(A) the availability of natural supports to assist the recipient to perform activities;

(B) the expectation of multi-tasking on the part of a personal care assistant;

(C) the performance of the recipient's personal care services activities by one personal care assistant without consideration of the personal care assistant's performance abilities, or the recipient's habits; and

(2) develop a service level authorization that identifies the specific ADLs, IADLs, and other activities specified in 7 AAC 125.030 that the personal care assistant must perform to provide the level of assistance approved by the department.

(b) The total time authorized under (a)(1) of this section may be used to provide any ADL, IADL, or other activity, covered under 7 AAC 125.030, that is identified in the recipient's service level authorization developed under (a)(2) of this section.

(c) The department will not pay a provider for performance of any activity that is not

(1) included in 7 AAC 124.030; or

(2) identified in a recipient's service level authorization.

(d) A recipient's service level authorization or an amendment to service level authorization, developed under 7 AAC 125.026, takes effect upon approval by the department.

(e) The department will authorize personal care services for a specific length of time, not to exceed a 12-month period.

(f) The department will terminate the recipient's authorization to receive personal care services approved under this section for the following reasons:

(1) the recipient fails to use the personal care services in the service level authorization within 30 days of approval by the department or during any 30 day period authorized under (e) of this section, unless the recipient demonstrates to the department's satisfaction that the non-use of services was for reasonable cause and the recipient resumes personal care services;

(2) the department determines that the recipient, the recipient's representative, the representative's designee, or the recipient's personal care services agency misrepresented the recipient's physical condition, or need for personal care services, for the purpose of obtaining services that are not medically necessary or for which the recipient does not qualify;

(3) the recipient has a documented history of failing to cooperate with the delivery of services identified in the service level authorization, or of placing a personal care assistant at risk of physical injury, and no other provider is willing to provide services for the recipient; for the purposes of this paragraph a documented history exists if a provider

(A) reports that a personal care assistant was unable to obtain cooperation with service delivery or to mitigate the risk of physical injury to the personal care assistant through reasonable accommodation of the recipient's disability; and

(B) maintains records to support that report, and makes those records available to the department for inspection; the department will review those records before making a decision to terminate the recipient's authorization to receive personal care services.

(Eff. 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_; Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.026 is repealed and readopted to read:

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

(a) The department may increase, or reduce the time authorized for, or terminate, personal care services if the department determines that a recipient has experienced a change that alters the recipient's need for physical assistance with ADLs, IADLs, or other covered services.

(b) To request an amendment to a service level authorization before the end of the recipient's current authorization period, a personal care services agency must

(1) complete and submit the form provided by the department for that purpose;;  
and

(2) submit current medical or other relevant documentation that supports the claim that the change alters the recipient's need for physical assistance with ADLs, IADLs, or other covered services.

(c) For purposes of this section, the department may determine, based on a review of the recipient's record, that a change requiring an amendment to the recipient's service level authorization occurs if

(1) the recipient's physical condition changed after the recipient's last assessment conducted in accordance with 7 AAC 125.020;

(2) the recipient's living environment, support services, or informal supports or caregivers changed after the recipient's last assessment; or

(3) the recipient received personal care services

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

(B) that are no longer authorized under 7 AAC 105 - 7 AAC 160.

(d) Before reducing the time authorized for personal care services under this chapter for a recipient who also receives home and community-based waiver services under 7 AAC 130.200-130.319, the department will first consider whether a reduction in the time authorized for personal care services would create a risk of institutionalization;

(1) to make this determination, the department will consider

(A) the documents specified in 7 AAC 125.012(c)(4) that are current and submitted by the recipient in response to the department's notification requiring a new assessment;

(B) the findings on the recipient's *Consumer Assessment Tool* that are the result of a new assessment;

(C) the impact of a reduction in time measured over a 24 hour period, taking into consideration the total time that the recipient receives physical assistance from any source;

(D) whether the recipient's representative, family members, or other natural supports provide assistance to the recipient;

(E) whether other individuals living in the same residence as the recipient receive services that benefit the recipient;

(F) the recipient's history of utilization of the time authorized on the recipient's current service level authorization; and

(G) whether other services, including waiver services, can be increased to offset a reduction in personal care services;

(2) in this section, “risk of institutionalization” means the possibility that a recipient would be relocated from the recipient’s current residence to a hospital or nursing facility in 30 days.

(Eff. 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_; Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.028 is repealed and readopted to read:

**7 AAC 125.028. Reporting changes**

(a) The recipient shall report to the recipient's personal care services agency any of the following changes by telephone, by facsimile transmission, by electronic mail, in writing, or in person, not later than 15 days after the recipient knows of the change:

(1) a change in the recipient’s

(A) place of residence or living arrangement;

(B) personal contact information;

(C) representative;

(D) medical provider;

(E) marital status;

(2) eligibility to receive home and community-based waiver services under 7 AAC 130.200 – 130.319, or other health care services that duplicate the recipient’s personal care services;

(3) an improvement or decline in the recipient’s physical condition; and

(4) a change in household composition, or in the number of other recipients receiving services in the recipient’s place of residence or living arrangement.

(b) A personal care services agency shall report, on a form provided by the department, any change in the recipient's physical condition that could affect the recipient's service level authorization or the level of services provided to the recipient, not later than 15 days after the personal care services agency learns of the change; the personal care services agency may submit the report form by facsimile transmission, by electronic mail, in writing, or in person.

(c) Upon review of a report under (a) or (b) of this section, the department may conduct a new assessment of a recipient based upon its determination that reassessment is necessary to confirm the need to continue the recipient's level of assistance with the activities specified in recipient's current services level authorization.

(Eff. 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_; Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.030 is repealed and readopted to read:

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

(a) The department will pay for the personal care services identified in this section for a recipient, if those services are

(1) included in the recipient's service level authorization;

(2) provided through either an agency-based or a consumer-directed personal care services program in accordance with 7 AAC 125.010 - 7 AAC 125.199; and

(3) verified as received by the recipient on timesheets or progress notes; the timesheets or progress notes must be signed by the recipient or the recipient's representative, except as provided in 7 AAC 125.100 (b).

(b) Based on the assessment and level of assistance determination under 7 AAC 125.020, the department may authorize personal care services for the following types of physical assistance provided to enable the recipient to complete an ADL.

(1) For the ADL of bed mobility, available only for a recipient that is non-ambulatory,

(A) moving a recipient to and from a lying position;

(B) turning a recipient from side to side in a bed; and

(C) positioning a recipient in a bed; the department will not authorize time for the ADL of bed mobility for the moving, turning, or positioning of a recipient that is necessary for the performance of the ADLs of transferring, locomotion, toileting, and bathing.

(2) For the ADL of transferring, moving a recipient between one surface and another, including to and from a bed, chair, or wheelchair; the department will not authorize time

for the ADL of transferring for the moving of a recipient that is necessary for the performance of the ADLs of toileting and bathing.

(3) For the ADL of locomotion, only if the physical assistance of a personal care assistant is necessary in addition to an assistive device for a recipient to walk

(A) between locations in the recipient's residence; or

(B) from a location in the recipient's residence to a vehicle used by the recipient to access a routine medical or dental appointment, and from a vehicle to a location in the recipient's residence when the recipient returns from that appointment; the department will not pay for the ADL of locomotion for

(i) a recipient that is self-sufficient with an assistive device;

(ii) assistance associated with the ADL of toileting under (6) and the ADL of bathing under (8) of this subsection.

(4) For the ADL of dressing, the putting on, fastening, unfastening, and removal of the recipient's clothing, support hose, or prosthesis.

(5) For the ADL of eating and drinking,

(A) eating and drinking, oral intake, except that, regardless of the number of times the recipient eats and drinks each day, the department will not approve more time than that allowed for the consumption of three meals a day;

(B) for a recipient in consumer-directed personal care services program only, tube feeding, manual or with a mechanical device, if the recipient has a written plan for feeding from the recipient's physician, physician assistant, advanced nurse practitioner, that is licensed under AS 08 or is a federal employee described in 7 AAC 105.200 (c); the written plan must

(i) specify the method for administration of the enteral nutrition product and fluids; and

(ii) provide instructions for the recipient's personal care assistant to follow regarding the method of administration, enteral nutrition product and fluids to be used and the amount for each feeding, rate of flow and duration of each feeding, and feeding schedule; the personal care services agency must ensure that the recipient's personal care assistant has the skills and knowledge of equipment necessary to administer tube feedings to the recipient; and

(C) supervising the eating and drinking of a recipient who has swallowing or aspiration difficulties only if

(i) the need for supervision has been confirmed by a swallow study that is not older than one year prior to the date of application under 7 AAC 125.012; and

(ii) the report of that study is submitted to the department with the recipient's initial application under 7 AAC 125.012 or request for amendment under 7 AAC 125.026, or as requested by the department.

(6) For the ADL of toileting,

(A) moving a recipient to and from a location in the recipient's home and the location of the toilet or commode and to and from the toilet or commode, including all transfers and locomotion associated with toileting;

(B) assisting the recipient with the use of a bedpan or urinal;

(C) colostomy, ileostomy, or external catheter care; and

(D) for a recipient in a consumer-directed program only, inserting a non-medicated suppository, digital stimulation, or other routine incontinence care.

(7) For the ADL of personal hygiene, regardless of gender,

(A) washing and drying face, hands, or feet, when done separately from bathing;

(B) nail care for non-diabetic recipients;

(C) skin care;

(D) mouth and teeth care;

(E) brushing and combing hair;

(F) shaving, when done separately from bathing; and

(G) washing hair, when done separately from bathing.

(8) For the ADL of bathing, the washing of a recipient's entire body, including the recipient's hair, in a bathtub or shower, or by means of a sponge bath, and all transfers and locomotion associated with bathing.

(c) Personal care services may include the following types of physical assistance, available only for a recipient that is 18 years of age or older, provided to enable the recipient to complete an IADL; the department will not pay for performance of an IADL by a personal care assistant if that IASL is the responsibility of an immediate family member.

(1) For the IADL of light meal preparation in the recipient's home, the preparation, serving, and cleanup of a 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 requirements of (e) of this subsection.

(2) For the IADL of main meal preparation in the recipient's home, the preparation, serving, and cleanup of one main meal per day that is essential to meet the health needs of the recipient, subject to the requirements of (e) of this section.

(3) For the IADL of housework in the recipient's home,

(A) making living spaces used by the recipient neat and orderly, including dusting and floor cleaning;

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

(C) cleaning any bathroom used by recipient;

(D) making the recipient's bed;

(E) trash removal; and

(F) providing food and water, and clean-up and disposal of animal waste, for a certified service animal.

(4) For the IADL of laundering,

(A) changing a recipient's bed linens; and

(B) laundering a recipient's linens and clothing.

(5) For the IADL of shopping, shopping for items required for the health and maintenance of the recipient, including groceries and household items, and prescribed drugs and medical supplies.

(d) In addition to the types of physical assistance set out in (b) and (c) of this section, personal care services may include the following activities if physical assistance is necessary for a recipient to complete the activity:

(1) assisting a recipient with self-administration of prescribed oral medication, eye drops, and skin ointments;

(2) minor maintenance of respiratory equipment;

(3) dressing changes and wound care, except that dressing changes and wound care involving prescription medication and aseptic techniques may be performed only by a personal care assistant working for a consumer-directed personal care services agency;

(4) escorting a recipient to a routine medical or dental appointment, or from a routine medical or dental appointment, if that recipient is

(A) authorized to receive assistance with the ADL of locomotion; and

(B) transportation for the appointment was approved in accordance with

7 AAC 120.405 (a); and

(5) passive range-of-motion, if provided for a recipient that has

(A) a documented physical condition associated with contractures that results in a need for passive range-of-motion for the extremities affected by that condition; and

(B) a written plan for passive range-of-motion for those extremities, to be performed in the home of the recipient, that

(i) has been provided by the recipient's physician, physician's assistant, advanced nurse practitioner, physical therapist, or occupational therapist that is licensed under AS 08 or is a federal employee described in 7 AAC 105.200 (c);

(ii) provides detailed guidance, for the movements of the recipient's extremities, that is to be followed by the recipient's personal care assistant when performing passive range-of-motion as a personal care service;

(iii) is reviewed, and revised as necessary, if there is a change in the recipient's condition; a review must be done not less than annually, whether or not there is such a change; and

(iv) is submitted to the department with the recipient's application under 7 AAC 125.012 or request for amendment under 7 AAC 125.026, or as requested by the department.

(e) 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.

(f) If two or more recipients reside in the same residence, the department may require that one personal care assistant provide assistance with specified IADLs when those activities benefit all recipients in that residence.

(h) In this section,

(1) "assistance with self-administration of medication" means

(A) reminding the recipient to take medication;

(B) opening a medication container or prepackaged medication for the recipient;

(C) reading a medication label to the recipient;

(D) providing food or liquids if the medication label instructs the recipient to take the medication with food or liquids;

(E) observing the recipient while the recipient takes medication;

(F) checking the recipient's dosage to be self-administered against the label of the medication container;

(G) reassuring the recipient that the recipient is taking the dosage as prescribed; or

(H) directing or guiding the hand of the recipient, at the recipient's request, while the recipient administers medication;

(2) “medication” means a drug or product, including an over-the-counter product, that is intended to be taken by the recipient at a scheduled time or as needed, and that is prescribed for a recipient by the recipient’s advanced nurse practitioner, physician, physician assistant or dentist that is licensed under AS 08 or is a federal employee described in 7 AAC 105.200 (c).

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.040 is repealed and readopted to read:

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

(a) The department will not pay for the following as personal care services for a recipient:

(1) application of dressings involving prescription medication and aseptic techniques, except as allowed under 7AAC 1225.030 (d)(3);

(2) invasive body procedures, including

(A) tracheostomy care, deep suctioning, and care and maintenance of intravenous equipment;

(B) tube feedings, except as allowed under 7 AAC 125.030 (b)(5)(B);

(C) insertion or removal of catheters, enemas,

(D) injection of medication, and administration of medication

(3) cleaning an area not used directly by the recipient, home maintenance, or pet care, except care for a certified service animal under 7 AAC 125.030 (c)(3)(F);

(4) an activity that the department determines could be performed by the recipient;

(5) an activity 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) an activity that is not included in the recipient's service level authorization approved under 7 AAC 125.024;

(7) care of other members of the recipient's household, babysitting, or social visitation;

(8) services provided under 7 AAC 130.200 – 130.319;

(9) supervision, except for supervision under 7 AAC 125.030 (b)(5)(C): oversight or standby functions: or monitoring of equipment;

(10) an activity that supplants or duplicates assistance offered by an individual or organization without charge;

(11) an activity for which payment for performance of that activity is the responsibility of a third party;

(12) assistance with an IADL under 7 AAC 125.030 (c) that

(A) is the responsibility of an immediate family member; or

(B) duplicates services other recipients living in the same residence receive as assistance with IADLs under this section or similar services under 7 AAC 130.245, and those services are sufficient to maintain a clean, sanitary, and safe environment for all recipients in that residence; the department may authorize assistance with an IADL that duplicates services if it is justified as necessary for the health, safety, and welfare of a recipient;

(13) assistance with an activity that is a parental responsibility for a minor recipient, and that, if not provided, would be considered neglect of a child under AS 47.10.014;

(14) range-of-motion exercise, walking exercise, or other types of exercise, except for passive range-of-motion as specified in 7 AAC 125.130 (d)(5);

(15) any activity not specified in 7 AAC 125.030.

(b) The department will not make separate payment for personal care services under 7 AAC 125.010 - 7 AAC 125.199<sub>2</sub> if a recipient receives residential supported living services as in-home support services under 7 AAC 130.265 (h).

(c) A recipient that is eligible for both home and community-based waiver chore services under 7 AAC 130.245 and personal care services under 7 AAC 125.030 (c) must choose either to receive chore services or to have similar activities performed as personal care services.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am 11/3/2012, Register 204; am 7/1/2015, Register 214; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 125.050 is repealed and readopted to read:

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

(a) The department will pay for personal care services for a recipient only if provided

(1) in the recipient's residence if that residence is

(A) the dwelling that the recipient considers to be the recipient's established or principal home and to which, when absent, the recipient intends to return; and

(B) real property or personal property that is fixed or mobile and is located on land or water, provided the living conditions are appropriate for the needs of the recipient, including adequate arrangements for hand washing and waste disposal;

(2) during a temporary absence under (c) of this section; or

(3) at the recipient's workplace, if the recipient needs physical assistance with ADLs to prevent job loss; the department will not assess the recipient at the recipient's workplace or allow time for personal care services at that location in addition to the total time authorized in accordance with 7 AAC 125.024.

(b) The department will not pay for personal care services for a recipient in the following locations:

(1) a licensed skilled or intermediate care facility or hospital;

(2) a licensed intermediate care facility for individuals with an intellectual or developmental disability or a related condition;

(3) a foster home licensed under AS 47.32, except for a recipient, residing in the foster home, that is eligible under the recipient category of

(A) children with complex medical conditions, 7 AAC 130.205 (d)(1); or

(B) individuals with intellectual and developmental disabilities, 7 AAC 130.205 (d)(3);

(4) an assisted living home licensed under AS 47.32;

(5) an unlicensed residential setting that the department considers to be an assisted living home under AS 47.32.900 (2);

(6) a residence where personal care services are provided under a contractual agreement;

(7) a general acute care hospital.

(c) The department will pay for personal care services for a recipient during a recipient's temporary absence from the recipient's community when the recipient travels to another location within the state or to a destination in another state if

(1) the services are requested prior to travel, and are approved by the department in the personal care services level authorization;

(2) the services are necessary to maintain the recipient's current level of functioning, and the temporary absence is justified as

(A) a medical necessity documented by a physician that is licensed under AS 08.64 or is a federal employee described in 7 AAC 105.200 (c);

(B) an educational opportunity of limited duration that is not available in the recipient's community or in the state, and that will further the recipient's capacity for vocational or professional employment;

(C) a vacation;

(3) the recipient's need for assistance with ADLs, IADLs, and other covered services during the travel period can be met only by a personal care assistant;

(4) the services to be provided during the recipient's temporary absence are the same as those provided when the recipient is in the recipient's community;

(5) the temporary absence will be for at least 24 hours, but not more than 30 days; the department will authorize personal care services for not more than 30 days in a 365 day period;

(6) the recipient meets the requirements of 7 AAC 100.064, if travel is to be out-of-state; and

(7) the personal care services provider certified and enrolled under 7 AAC 125.060 maintains an employer relationship with the personal care assistant traveling with and providing services to a recipient during a temporary absence.

(d) Notwithstanding (c)(4) of this section, the department may approve a temporary absence of more than 30 days in a 365 day period if

(1) a physician that is licensed under AS 08.64 or is a federal employee described in 7 AAC 105.200 (c) justifies a longer temporary absence as a medical necessity under (c)(2)(A) of this section; or

(2) the department determines that the benefits to the recipient of an educational opportunity under (c)(2)(B) of this section justify a longer temporary absence.

(e) The department will not pay for

(1) transportation, room and board, or other expenses for a personal care assistant or other individual providing services under this section; or

(2) services provided in any location other than those where Medicaid services may be provided.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am 11/3/2012, Register 204; am 7/1/2015, Register 214; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register\_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: As of Register 207 (October 2013), and acting under AS 44.62.125(b)(6) and sec. 29, ch. 42, SLA 2013, the regulations attorney made a technical change to 7 AAC 125.050(b), to change "intermediate care facility for the mentally retarded" to "intermediate care facility for individuals with an intellectual disability or related condition." Chapter 42, SLA 2013 amended terminology in the Alaska Statutes to replace references to "mental retardation" and "mentally retarded" with more current terms. Section 29, ch. 42, SLA 2013 instructed that similar changes be made in the Alaska Administrative Code.

7 AAC 125.060 is repealed and readopted to read:

#### **7 AAC 125.060. Personal care services agency certification and enrollment**

(a) To receive payment for personal care services, an agency must be certified by the department as a provider of personal care services, an agency must

(1) submit an application, on a form provided by the department; before submitting the application for certification or recertification, the personal care services program administrator for that agency must attend the personal care services agency training course provided by the department;

(2) meet the applicable certification criteria, including provider qualifications and program standards, set out in the department's *Personal Care Services Conditions of Participation*, adopted by reference in 7AAC 160.900;

(3) disclose, on a form provided by the department, all close business relationships with another personal care services provider or a home and community-based waiver services provider; and

(4) demonstrate to the department's satisfaction that agency personnel possess the requisite skills and competencies necessary to meet the needs of the recipient population; and

(5) enroll in the Medicaid program under 7 AAC 105.210.

(b) The department will certify a provider under this section for the following time periods:

(1) one year for a provider not previously certified by the department to provide personal care services; and

(2) two years for a currently certified provider that is renewing that provider's certification.

(c) Not later than 90 days before the expiration of the provider's certification, the department will send to the provider notice of the requirement to renew that certification. The provider must submit a new certification application and all required documentation not later than 60 days before the expiration date of the current certification.

(d) The department will not certify a provider agency as both a provider of personal care services under this section and care coordination services under 7 AAC 130.220 (a)(2) unless the department grants an exception based on the following:

(1) the availability of care coordination services in a specified non-urban geographic area of the state is insufficient to meet the needs of the recipients residing in that area;

(2) an agency certified as a provider of personal care services agency in that geographic area is willing and qualified to provide care coordination services, and that agency has requested an exception on a form provided by the department;

(3) the recipients could be served by certifying that agency as a provider of personal care services and care coordination services; in this paragraph, "non-urban" means a geographic area that, according to the Alaska Department of Labor and Workforce Development's *Alaska Borough/Census Areas* map based in 2013 geography, is located within

the bounds of a borough or census area other than the following: Municipality of Anchorage, Fairbanks-North Star Borough, City and Borough of Juneau, Kenai Peninsula Borough, and Matanuska-Susitna Borough.

(e) The department will certify a provider agency approved for an exception under (c) of this section for a period of three years. Every three years, beginning July 1, 2016, the department will evaluate the need for an exception in a specified geographic area. If the department determines there is no longer a need for an exception, the department will not recertify an agency as a provider of both personal care services and care coordination services.

(f) An agency certified as a provider of both personal services and care coordination services in accordance with (c) of this section shall

(1) operate the care coordination services section as a distinct unit separate from the units that provide personal care services under this chapter or home and community-based waiver services under 7 AAC 130.200 – 7 AAC 130.319;

(2) appoint an individual to the position of program administrator for care coordination services only; that individual may not serve as program administrator for either personal care services or home and community-based waiver services during that individual's tenure as program administrator for care coordination services;

(3) implement a process to resolve disputes that may arise among the service units; and

(4) provide an alternative dispute resolution process for recipients.

(g) A certified personal care services provider under this chapter shall comply with this chapter and the requirements of 7 AAC 105.200 – 7 AAC 105.280. The department will determine compliance through program monitoring, including audits, program reviews, and investigations, that may take place at the provider's place of business or at any site where services under this chapter are provided. To assure compliance, the department may

(1) request, in accordance with 7 AAC 105.240, records related to the services provided under this chapter; or

(2) 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; once records are in the custody of the department, the provider may make copies of those records only under the supervision of the department.

(h) In addition to the authority under 7 AAC 105.400 -7 AAC 105.490 to take action in regard to certification, the department will deny an initial application if

- (1) the provider fails to submit a complete application under (a) of this section;
  - (2) the provider's certification, license, or enrollment related to Medicaid or Medicare was denied, revoked, or rescinded;
  - (3) the provider's name appears on any state or federal exclusion list related to health care services;
  - (4) the department has documentation that indicates the provider is unable or unwilling to meet the certification requirements of this section or any other Medicaid requirement under 7 AAC 105 - 7 AAC 160;
  - (5) the department has evidence that a provider's owner or administrator does not operate honestly, responsibly, and in accordance with applicable laws in order to maintain the integrity and fiscal viability of the medical assistance program; or
  - (6) based upon evidence from an audit, provider review, or investigation, the department has probable cause to believe that a provider's noncompliance with the Medicaid program or this chapter causes immediate risk to the health, safety, or welfare of a recipient or would be considered to be fraud, abuse or waste.
- (i) If the department denies an initial application, the department will send, within 14 business days of the decision, written notice of the action and information regarding the provider's right to appeal the decision under AS 44.64.
- (j) The department may enter into a contract under AS 36.30, a grant agreement, or another arrangement permitted by law, with a provider or tribal health program that authorizes the provider or tribal health program to provide personal care services to a specified group of recipients or in a specific geographical area.
- (k) 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.

(l) In this section,

(1) "close business relationship" means

(A) a five percent or greater ownership, partnership, or equity interest in another personal care services provider or its owner, or a home and community-based waiver services provider or its owner; or

(B) a five percent or greater ownership, partnership, or equity interest in any other business or commercial activity in which another personal care services provider or its

owner, or a home and community-based waiver services provider or its owner also has a five percent or greater ownership, partnership, or equity interest;

(2) "owner" means a person having a five percent or greater ownership, partnership, or equity interest.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.080 is repealed and readopted to read:

**7 AAC 125.080. Personal care services agency decertification and disenrollment**

(a) The department will deny an application to renew the certification of, suspend certification of, disenroll or decertify a personal care services agency as a provider for the consumer-directed or agency-based program

(1) if the agency does not submit an application for renewal in accordance with, or meet the requirements of, 7 AAC 125.060 (a);

(2) meet the requirements in the *Personal Care Services Conditions of Participation*, adopted by reference in 7 AAC 160.900 or in 7 AAC 125.010 – 7 AAC 125.199;

(3) for grounds and under procedures set out in 7 AAC 105.400 - 7 AAC 105.490;

(4) if the agency is no longer qualified for certification under 7 AAC 105 - 7 AAC 160;

(5) if a personal care assistant does not pass a criminal history check or a criminal history check is revoked in accordance with 7 AAC 10.900 - 7 AAC 10.990, and the personal care services 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;

(6) for the reasons stated in 7 AAC 125.060 (d) (1) – (6).

(b) If the department denies an application to renew certification, or suspends certification of a provider, the department will send, within 14 business days of the decision, written notice of the action and information regarding the provider's right to appeal the decision under AS 44.64.

(c) In lieu of decertification or suspension, the department may

(1) establish a corrective action plan that includes the method by which the provider will verify compliance and the date that compliance is required; and

(2) monitor the provider's progress toward meeting the requirements of the corrective action plan; if the department finds that the provider has not met the requirements of the corrective action plan by the date compliance is required, the department may decertify or suspend the provider as provided in (g) of this section.

(d) Notwithstanding the provisions of this section, when the department has reasonable cause to believe that the health, safety, or welfare of a recipient is at risk, the department may immediately suspend or revoke a provider's certification; in the event of this action, the department will

(1) give to the provider initial notice, oral or written, of the suspension or revocation of certification, including information regarding the right to appeal; or when no one is present to receive the notice, post the notice on the main entrance to the building in which the provider agency is located; and

(2) within 14 working days of the date of the suspension or revocation of certification, issue a formal report that includes information related to the action taken, the reason for the action, and the right to appeal.

(e) Providers that are disenrolled or decertified by the department under this section may appeal that decision under 7 AAC 105.460.

(Eff. 2/1/2010, Register 193; am 8/25/2010, Register 195; am\_\_\_\_/\_\_\_\_/\_\_\_\_; Register\_\_\_\_)

Authority: AS 47.05.010 AS 47.05.310 AS 47.05.340

AS 47.05.300 AS 47.05.320 AS 47.07.030

7 AAC 125.090 is repealed and readopted to read:

**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 must

(1) be at least 18 years of age;

(2) comply with the requirements of 7 AAC 125.010 - 7 AAC 125.199;

(3) be associated with a personal care services agency certified in accordance with 7AAC 125.060, and individually enrolled with the department;

(4) pass a criminal history check requested under (c) of this section, unless the department grants a variance under 7 AAC 10.935;

(5) not have a health care provider license or certification currently denied or revoked;

(6) be able independently to physically assist the recipient with the ADLs and to perform the IADLs and other covered services identified in the recipient's personal care services level authorization approved under 7 AAC 125.024.

(b) A personal care services agency that manages an agency-based program must implement a process that ensures the individuals hired as personal care assistants are qualified under (a) of this section; the process, at a minimum, must require that an applicant for a personal care assistant position

(1) submit three letters of reference from individuals that

(A) are not employed by the hiring personal care services agency;

(B) are not supervised by the applicant;

(C) have known the applicant for at least three years; and

(D) attest to the applicant's good character and knowledge, skills, and ability to meet the performance requirements of (a) (6) of this subsection; and

(2) submit evidence of having met the education and training requirements of 7 AAC 125.160.

(c) The department will not pay for services provided by a personal care assistant if the personal care assistant

(1) is not associated with the personal care services agency that requests a criminal history check for that individual in accordance with 7 AAC 10.900 - 7 AAC 10.990;

(2) does not pass the criminal history check; except that the department will not withhold payment if it grants a provisional valid history check under 7 AAC 10.920 or a variance under 7 AAC 10.935;

(3) provides services under an agency-based personal care services program, but does not have on file documentation of training required under 7 AAC 125.090 (d) or 125.100 (a); or

(4) provides services under a consumer-based personal care services program, but does not have on file documentation of training required under 7 AAC 125.090 (d), and 125.100 (a).

(d) A personal care services agency that provides agency-based services or manages a consumer-directed program must have on file, for each personal care assistant, certification documents showing successful completion of

(1) cardiopulmonary resuscitation (CPR) training, taught by an individual that holds a valid CPR instructor credential in accordance with 7 AAC 26.985; except as provided in (e) and (f) of this section, the CPR training and certification must have occurred within the previous two years;

(2) first aid training, taught by an individual certified by the American Red Cross, the American Heart Association, or an equivalent organization approved by the department; except as provided in (e) and (f) of this section, the first aid training and certification must have occurred within the previous two years;

(3) assistance with self-administration of medication training that addresses the activities specified in 7 AAC 125.030 (h); and

(4) use of restrictive intervention training in accordance with 7 AAC 125.XXX

(e) If a personal care assistant is unable to attend the CPR or first aid training required under (d) of this section because it is not periodically available within 100 miles of the workplace, the provider must ensure that, and have on file certification documents showing, the personal care assistant attended and successfully completed the training every three years.

(f) An individual, starting work as a personal care assistant for the first time without certification documents showing the CPR or first aid training within the previous two years required in (d) of this section, may request, on a form provided by the department, a waiver of the CPR or first aid training requirements for one year; the department may approve a waiver if the individual states reasonable cause for an inability to obtain training or certification for one year, and may prescribe an alternate method for compliance with the requirements.

(g) A personal care services agency shall not submit a claim for services rendered by a personal care assistant unless

(1) the agency has associated the personal care assistant with that agency on the New Alaska Background Check System;

(2) the department has given written notice to the agency that

(A) the personal care assistant passed a criminal history check under 7 AAC 10.900 – 7 AAC 10.990; or

(B) the department granted to that personal care assistant a provisional valid criminal history check under 7 AAC 10.920 or a variance under 7 AAC 10.935; and

(3) the agency verified that the New Alaska Background Check System indicates the personal care assistant had a valid criminal history check during the time period for which the agency submits a claim.

(Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 47.05.010 AS 47.05.310 AS 47.05.340

AS 47.05.017 AS 47.05.320 AS 47.07.030

AS 47.05.300

7 AAC 125.100 is repealed and readopted to read:

**7 AAC 125.100. Safety of recipients; recipient representatives**

(a) An agency certified, in accordance with 7 AAC 125.060, as a provider of personal care services shall

(1) protect a recipient's health, safety, and welfare while rendering services under this chapter; and

(2) provide training for all employees regarding

(A) the mandatory reporting requirements of AS 47.17.020 for children and AS 47.24.010 for vulnerable adults;

(B) the critical incident reporting requirements of 7AAC 125.\_\_\_\_; and

(C) the reporting requirements of 7 AAC 10.955(c) for the centralized registry established under 7 AAC 10.955; and

(3) submit reports in compliance with AS 47.17.020, AS 47.24.010, 7 AAC 10.955(c), and this section.

(b) The recipient's representative must act on behalf of a recipient that is unable to manage the recipient's personal care services; the recipient's representative must

(1) select and negotiate a contract with a personal care services agency to provide the services authorized in the recipient's service level authorization;

(2) cooperate with department staff or the department's designee in reviews of the recipient's service level authorization;

(3) cooperate with department staff or the department's designee and with other state and federal oversight agencies during compliance reviews, investigations, or audits; and

(4) sign timesheets or progress notes in accordance with 7 AAC 125.030 (a)(3).

(c) If the recipient's representative is unable to act on behalf of the recipient because the recipient's representative is not present in the recipient's community and involved in the day-to-day care of the recipient, the recipient's representative must designate, on a form provided by the department, an individual that must act in accordance with (b) of this section; in addition, if the recipient receives services through a consumer-directed personal care services program, the representative's designee must act in accordance with the requirements of 7 AAC 125.140.

(1) The representative's designee must be

(A) at least 18 years old;

(B) present in the recipient's community, and involved in the day-to-day care of the recipient; and

(C) willing to manage and evaluate the recipient's personal care services as those services are provided in the recipient's home.

(2) The representative may not designate a public home care provider or individual affiliated with a public home provider to act on behalf of the recipient under this paragraph; "public home provider" has the meaning given in AS 47.05.017.

(Eff. 2/1/2010, Register 193; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

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 AAC125 is amended by adding a new subsection to read:

**7 AAC 125.\_\_\_\_\_. Critical incident reporting.**

(a) A provider of personal care services shall report to the department, on a form provided by the department, a critical incident involving a recipient not later than one business day after observing or learning of the critical incident.

(b) A provider of personal care services shall develop and implement a system to manage and report critical incidents that includes

(1) methods for identifying a critical incident;

(2) a protocol for emergency response to a critical incident;

(3) procedures for investigating and analyzing a critical incident to determine its cause;

(4) a plan to ensure that each member of the provider's staff is trained in critical incident management and reporting; and

(5) a process that ensures

(A) timely reporting of a critical incident to the department and the recipient's representative; and to other service providers when necessary to protect recipient health, safety, and welfare; and

(B) documentation of the date and names of the providers that are sent critical incident reports.

(c) A provider of personal care services that terminates services to a recipient under 7 AAC 125.110 shall refer the recipient to the office of the department responsible for adult protective services or the office of the department responsible for children's services as appropriate, if the provider has any concern that immediate termination of the provider's services will place the recipient at risk of harm.

(d) In this section,

(1) "critical incident" means

(A) a missing recipient;

(B) recipient behavior that resulted in harm to the recipient or others;

(C) misuse of restrictive interventions; in this paragraph, "restrictive intervention" has the meaning given in 7 AAC 130.229(g);

(D) a use of restrictive intervention that resulted in the need for evaluation by or consultation with medical personnel; in this paragraph, "restrictive intervention" has the meaning given in 7 AAC 130.229(g);

(E) death of a recipient;

(F) an accident, an injury, or another unexpected event that affected the recipient's health, safety, or welfare to the extent evaluation by or consultation with medical personnel was needed;

(G) a medication error that resulted in the need for evaluation by or consultation with medical personnel;

(H) an event that involved the recipient and a response from a peace officer;

(2) "evaluation by or consultation with medical personnel" means analysis of the incident with respect to a recipient's health, safety, and welfare for the purpose of determining an appropriate treatment or course of action;

(3) "medication error" means

(A) a failure to document assistance with self-administration of medication;

(B) a failure to provide assistance with self-administration of medication at, or within one hour before or one hour after, the scheduled time;

(C) the delivery of medication

time was outside the

- (i) at a time other than when a medication was scheduled, if that acceptable range in (B) of this paragraph;
- (ii) other than by the prescribed route;
- (iii) other than in the prescribed dosage;
- (iv) not intended for the recipient; or
- (v) intended for the recipient, but given to another individual.

(Eff. 2/1/2010, Register 193; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

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 is amended by adding a new subsection to read

**7 AAC 125.\_\_\_\_. Use of restrictive intervention.**

(a) A personal care assistant may use restrictive intervention only

(1) as a response when a recipient presents an imminent danger to the recipient's safety or to the safety of others;

(2) when other types of interventions have been tried, and documented as ineffective for safe management of the recipient's behavior that requires intervention; and

(3) if the type of intervention is safe, proportionate to the recipient's behavior, and appropriate to the recipient's chronological and developmental age, size, gender, and physical, medical, and psychological condition.

(b) The personal care services provider shall implement written policies and procedures that address

(1) the use of restrictive intervention in regard to the recipient population served by the provider;

(2) a prohibition on the use of

(A) seclusion as a restrictive intervention;

(B) prone restraint; and

(C) chemical restraint;

(3) training in the use of restrictive intervention;

(4) documentation of each event that involves the use of restrictive intervention.

(c) The provider must have on file written verification that each personal care assistant has received training appropriate to the type of restrictive intervention the provider has allowed that personal care assistant to use.

- (d) A provider that uses restrictive intervention shall document in the recipient's record
- (1) the date and time;
  - (2) the duration of time each type of restrictive intervention was used;
  - (3) a description of the behavior that led to the use of restrictive intervention;
  - (4) a rationale for, and a description of, each type of restrictive intervention used;
  - (5) the recipient's response to each type of restrictive intervention used; and
  - (6) the name of each personal care assistant involved in the restrictive intervention.
- (e) The provider shall maintain a record of restrictive intervention that documents
- (1) the event or circumstances that necessitated the use of restrictive intervention;
  - (2) the type of restrictive intervention used;
  - (3) the type of care provided to the recipient while a restrictive intervention is applied; and
  - (4) the outcome for the recipient and for the personal care assistant involved in the event.
- (f) The provider shall develop and implement a system to manage and report the use of restrictive intervention that includes
- (1) a plan for documenting and tracking the use of restrictive intervention;
  - (2) requirements for reporting, as a critical incident under 7 AAC 125.xxx
    - (A) the misuse of restrictive intervention; and
    - (B) the use of restrictive intervention that resulted in the need for medical intervention;
  - (3) a protocol for analyzing the use of restrictive intervention each calendar quarter;
  - (4) a procedure for taking corrective action based on the analysis; and

(5) a process for summarizing the quarterly analyses and corrective action taken under this subsection; the summary must be submitted to the department with the provider's application for recertification under 7 AAC 126.060, or upon request.

(g) In this section,

(1) "restrictive intervention" means an action or procedure that limits a recipient's movement or access to other individuals, locations, or activities;

(2) "seclusion" means the involuntary confinement of a recipient alone in a room or an area from which the recipient is physically prevented from having contact with others or leaving;

(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 the recipient's physician, physician assistant, or advanced nurse practitioner, that is licensed under AS 08 or is a federal employee described in 7 AAC 105.200 (c), and administered in accordance with the applicable requirements of 7 AAC 125.030 (d)(1).

(Eff. \_\_\_/\_\_\_/\_\_\_, Register \_\_\_)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 125.110 is repealed and readopted to read:

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

(a) Not later than 30 days before personal care services agency terminates personal care services to a recipient, the agency shall send written notice of the termination to the department and to the recipient.

(b) For a recipient terminated from a consumer-directed program because of a lack of cognitive capacity to self-direct personal care services or a documented history of self-neglect, the agency administering the program shall inform that recipient of

(1) the recipient's eligibility to transfer to, and to receive personal care services through, an approved personal care services agency offering an agency-based program; and

(2) the requirements under 7 AAC 125.140 (e) regarding representation and documentation of capacity if the recipient elects to continue in a consumer-directed program.

(c) An agency may terminate services to a recipient without the notice required in (a) of this section if the provider

(1) has evidence that continuing services to the recipient will

(A) jeopardize the safety of a personal care assistant providing services for that recipient;

(B) endanger the health, safety, and welfare of the recipient because the recipient rejects or does not cooperate in the provision of personal care services; or

(C) create a financial risk for the agency because the agency suspects recipient misrepresentation or fraud ; and

(2) documents the measures that the agency took to address the recipient behavior that resulted in immediate termination.

(d) An agency that terminates services under (b) of this section shall

(1) provide written notice explaining the reason for termination to the recipient;

(2) submit the documentation required in (c)(2) of this section and a copy of the written notice of termination to the department at the same time notice of termination is sent to the recipient;

(3) refer the recipient to the office of the department responsible for adult protective services or the office of the department responsible for children's services as appropriate if the agency has any concern that the immediate termination of services will place the recipient at risk of harm; and

(4) refer suspected misrepresentation, fraud, and waste of Medicaid funds to the department.

(e) An agency that intends to close, sell, or change ownership of or a percentage of ownership in, a business certified under 7 AAC 125.060 shall send written notice of that intention to the department and to each affected recipient not later than 60 days before the closure, sale, or change in ownership.

(Eff. Eff. 2/1/2010, Register 193; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.120 is repealed and readopted to read:

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

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

(1) a copy of the service level authorization signed by, or bearing the legal mark of, the recipient, the recipient's representative, or the representative's designee, and the department or its designee; documentation of services performed under the personal care service level authorization, including case notes, frequency, scope, and duration;

(2) any changes in a copy of any amendments to the recipient's personal care service level authorization prepared under 7 AAC 125.024125.026, 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; documentation, in the form of case notes, of services provided in accordance with the service level authorization;

(4) a time sheets that indicate

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

(B) for each visit, verification of services by the signature or legal mark of the recipient, the recipient's representative, or the representative's designee

(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 chooses to receive personal care services from another changes personal care assistants or discontinues personal care services provider agency, the former personal care assistant or provider agency shall deliver the record required by (a) of this section to the appropriate personal care agency chosen by the recipient not more than two business 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 services agency not more than two business 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 not more than 24 hours, or not 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 in accordance with 7 AAC 10.925(b).

(h) A personal care assistant shall notify the personal care agency not 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 written after as services are provided, that

(1) include document the date, time in and time out, activities provided, and 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 and, signed by a personal care assistant;, and

(4) contained in are retained as part of the recipient's service record.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am\_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 47.05.010 AS 47.05.320 AS 47.07.030

AS 47.05.310 AS 47.05.340

7 AAC 125.130 is repealed and readopted to read:

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

(a) In addition to meeting the requirements under 7 AAC 125.010 - 7 AAC 125.199, a personal care services agency that administers a consumer-directed program shall

(1) perform, at least once every six months, a review of the recipient's services, including

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

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

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

(D) recommending to the department, when the recipient's needs change, amendments to the recipient's service level authorization and the reasons for the recommendations;

(2) maintain communications with the recipient, the recipient's health care providers, as appropriate, and the personal care assistant;

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

(A) copies of each 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) copies of the personal care assistant's timesheets, signed by the recipient, the recipient's representative, or the representative's designee; and

(C) records of all contacts with the recipient, the recipient's health care providers, as appropriate, and the personal care assistant.

(b) The department may waive the required mid-year review of the recipient in the recipient's residence in accordance with (2)(A) of this subsection if

(1) the recipient's residence is in a remote community or location

(2) the agency performs a review of the recipient's services at least once in a 12 month period;

(3) the agency arranges for a telephonic or electronic meeting with the recipient and the recipient's personal care assistant for the mid-year review of services; and

(4) the agency requests a waiver on a form provided by the department, and documents to the department's satisfaction that a waiver of the mid-year review will not compromise the health, safety, or welfare of the recipient.

(c) A personal care services agency shall collect and verify consumer-directed personal care assistants' timesheets, and submit claims based on those timesheets to the department.

(d) A personal care services agency that administers a consumer-directed program and either the recipient or the recipient's representative shall

(1) identify possible risks for the recipient when needed assistance might not be available; and

(2) develop a backup plan that

(A) identifies the responsibilities of the agency and the recipient for obtaining the personal care services if the recipient's regularly scheduled personal care assistant is unable to provide those services; and

(B) defines a plan of action to ensure the health, safety, and welfare of the recipient when needed assistance is not available through the backup plan.

(Eff. Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register\_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.140 is repealed and readopted to read:

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

(a) To qualify for personal care services through a consumer-directed program, a recipient or a recipient's representative, identified in accordance with (e) (2) of this section, must

(1) demonstrate cognitive capacity for decision-making;

(2) understand the impact of, and assume responsibility for, managing and training the recipient's personal care assistants;

(3) designate a personal care services agency that administers a consumer-directed program to fulfill the responsibilities of 7 AAC 125.130 on behalf of the recipient;

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

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

(6) negotiate a contract for the recipient's personal care services with the personal care services agency that will administer those services through a consumer-directed program.

(b) The recipient, the recipient's representative, or the representative's designee is responsible for

(1) designating an individual that, as the recipient's personal care assistant, will render services as specified in the recipient's service level authorization developed in accordance with 7 AAC 125.024;

(2) training, and scheduling the personal care assistant;

(3) supervising, and signing the timesheets of, the personal care assistant;

(4) terminating employment of the personal care assistant if services are unsatisfactory or no longer needed.

(c) A recipient, the recipient's representative, or the representative's designee must notify the personal care services agency not more than five days after

(1) the date that the needs of the recipient for personal care services change; or

(2) the name or the address of the recipient, the recipient's representative, or the recipient's designee changes.

(d) If a recipient has a documented history of self-neglect or is found, during an assessment under 7 AAC 125.020, to lack the cognitive capacity to manage the recipient's personal care services, the department will pay for agency-based personal care services only; "self-neglect" has the meaning given in AS 47.24.900 (13).

(e) Notwithstanding (d), the department may pay for consumer directed personal care services for a recipient found to lack cognitive capacity during an assessment if

(1) the recipient demonstrates, to the department's satisfaction in additional documentation, that the recipient does have the cognitive capacity to manage the recipient's personal care services; the recipient must submit on a form provided by the department, a statement that indicates the recipient is capable of managing the recipient's own care and that is signed by the recipient's physician, physician assistant or advanced nurse practitioner licensed under AS 08 or a federal employee described in 7 AAC 105.200 (c); or

(2) the recipient submits to the department a document, dated prior to the application under 7 AAC 125.012, that identifies the recipient's representative and specifies the representative's authority, and that representative

(A) qualifies under (a) and accepts responsibility for the activities required under (b) of this section; or

(B) designates, in accordance with 7 AAC 125.100 (c) an individual that qualifies under (a) of this section and accepts responsibility for the activities required in (b) of this section.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.150 is repealed and readopted to read:

**7 AAC 125.150. Agency-based personal care services program; personal care services prior to authorization**

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

(1) is in the process of being, or has been, discharged from a general acute care hospital or a nursing facility,

(2) has a discharge plan or a diagnosis verification, signed in accordance with 7 AAC 125.012 (c)(4)(B)(i), that documents a need for personal care services to begin immediately upon the recipient's discharge;

(3) would be at risk of immediate re-hospitalization or placement in a nursing facility because the recipient's primary caregiver is not available due to

(i) an unplanned absence because of a medical or family emergency or hospitalization;

(ii) declining health that makes that caregiver unable to continue to provide care for the recipient; or

(iii) the death of that caregiver 30 or fewer days before the date of the recipient's discharge from a general acute care hospital or a nursing facility. and

(b) The department or its designee will schedule an assessment for a date not more than three days after discharge or the primary caregiver's unavailability; the three-day period may be extended if the department or its designee is not able to conduct the assessment during that period.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.160 is repealed and readopted to read:

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

(a) A personal care assistant must

(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 have 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 two-year period immediately preceding application to work as a personal care assistant, and have passed a standardized competency test approved by the department.

(b) Training under this section must be approved by the department, must be provided by a nurse licensed under AS 08.68; the training must include at least 40 hours of instruction in the following subject areas:

(1) infection control;

(2) bowel and bladder care;

(3) basic nutrition, and meal planning and preparation;

(4) procedures for physical transfers, including emergency evacuation of physically disabled persons and non-ambulatory persons;

(5) understanding the needs of and working with

(A) children and adults; and

(B) individuals with physical disabilities, intellectual and developmental disabilities, mental illness, and communicable diseases;

(6) knowledge of body systems, body mechanics, body disorders and diseases, and the observation of body functions;

(7) death and dying;

(8) skills, including the use of equipment, necessary to perform the activities identified in 7 AAC 125.030(b);

(9) legal requirements affecting personal care assistants, including record keeping under 7 AAC 105.230, confidentiality, personal care services program responsibilities under 7 AAC 105 - 7 AAC 160, and medical assistance fraud under AS 47.05.210; and

(10) universal precautions; for purposes of this paragraph, "universal precautions" means the infection control precautions, used to prevent the transmission of blood-borne pathogens, that are recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention;

(c) The department may pay for personal care services provided by an individual with a record of training that does not meet the requirements of this section if that individual

(1) has performed duties similar to those of a personal care assistant;

(2) has a satisfactory job performance evaluation from the individual's previous employer;

(3) has provided proof of successful completion of at least 16 hours of training in the subjects listed in (b) of this section;

(4) has on file documentation of successful completion of the training required in 7 AAC 125.090 (d); and

(5) submits proof of enrollment in training that, not more than four months after beginning employment as a personal care assistant, will qualify the individual to meet the training requirements of this section.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.170 is repealed and readopted to read:

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

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

(1) monitoring the delivery of services by personal care assistants to ensure services are provided in accordance with the service level authorization for each recipient;

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

(A) interviewing the recipient in the recipient's residence to ensure that services were provided and that the services authorized for the recipient will continue meet the recipient's needs;

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

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

(D) recommending to the department, when the recipient's needs change, adjustments to the service level authorization and the reasons for the recommendations;

(4) place, in the recipient's file, written instructions regarding emergency situations that the personal care assistant might encounter;

(5) maintain communications with the recipient, the recipient's health care providers, as appropriate, and the personal care assistant;

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

(A) copies of each 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) copies of the personal care assistant's timesheets; and

(C) records of all contacts with the recipient, the recipient's health care providers, as appropriate, 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) The department may waive the required mid-year review of the recipient in the recipient's residence in accordance with (2)(A) of this subsection if

(1) the recipient's residence is in a remote community or location

(2) the supervising registered nurse performs a review of the recipient's services at least once in a 12 month period;

(3) the agency arranges for a telephonic or electronic meeting by the supervising registered nurse with the recipient and the recipient's personal care assistant for the mid-year review of services; and

(4) the agency requests a waiver on a form provided by the department, and documents to the department's satisfaction that a waiver of the mid-year review will not compromise the health, safety, or welfare of the recipient.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.180 is repealed and readopted to read:

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

(a) A recipient that is terminated from an agency-based personal care services program may appeal that termination through the complaints process established by the personal care services agency.

(b) If the assessment under 7 AAC 125.020 indicates that an individual is not capable of managing consumer-directed services because of a lack of cognitive capacity, or if a recipient is terminated from a consumer-directed personal care services program because the recipient lacks cognitive capacity to manage personal care services, the recipient may appeal that decision under 7 AAC 49.

(c) A recipient may appeal, under 7 AAC 49, a decision by the department to

(1) reduce or end the time allowed for a personal care services covered activity on the recipient's current service level authorization;

(2) deny time on a service level reauthorization for a personal care services activity that was included in a previous service level authorization if that activity is listed in 7 AAC 125.030; or

(3) terminate the recipient's authorization to receive personal care services in accordance with 7 AAC 125.020 (f).

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.190 is amended to read:

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

The [IN BOTH THE COMSUMER-DIRECTED AND AGENCY-BASED PROGRAMS THE] department, with recipient participation, will conduct compliance reviews of the personal care services agencies **at least once every two years**, [ON A BIENNIAL BASIS] and at other times determined **to be** necessary by the department. The reviews **will** [MUST] include evaluation of

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

(Eff. 2/1/2010, Register 193; am\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_, Register \_\_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.195 is amended to read:

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

(a) The department will **pay** [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 **documented and verified** total time **during** [DOCUMENTED BY A PERSONAL CARE ASSISTANT IN] which the personal care assistant performed [PROVIDED THE] services **in accordance with** [AND TASKS COVERED UNDER 7 AAC 125.030 AND IN ACORDANCE 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 services 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 services agency for personal care services must be **disbursed to** [SPENT ON] personal care assistants **as payment for work performed**. [COMPENSATION FOR]

(e) A personal care assistant's rendering provider identification number must be associated [SUBMITTED] with each claim that the personal care services agency submits to the department for Medicaid payment. [FROM THE DEPARTMENT.]

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 125.199 is repealed and readopted:

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

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

(1) "ADL" means activity of daily living;

(2) "agency-based program" means a program to that provides personal care services to a qualified recipient that chooses not to manage, or is unable to manage those services because of cognitive capacity or a documented history of self-neglect who is unable to, or who chooses not to, take responsibility for managing those services;

(3) "consumer-directed program" means a program to that provides personal care services to a recipient who takes, or whose and that recipient, the recipient's legal representative, or the representative's designee takes, responsibility for managing those services;

(4) "CPR" means cardiopulmonary resuscitation;

(5) "IADL" means instrumental activity of daily living;

(6) "immediate family member of the recipient" means a relative of the recipient with a duty to support the recipient under state law;

(7) "natural supports" means

(A) individuals that, voluntarily and without payment, provide care and supports for the recipient; and

(B) the care and supports that are

(i) provided voluntarily and without pay for a recipient; and

(ii) similar to and supplemented by personal care services;

(8) "personal care service level authorization" means the authorization to provide personal care services for a recipient that was developed under 7 AAC 125.024, with any amendment under 7 AAC 125.026, and approved by the department.

(9) "recipient's representative" has the meaning given in 7 AAC 160.990 (b);

(10) "representative's designee" means an individual appointed by the recipient's representative in accordance with 7 AAC 125.100 (c).

(11) "remote community or location"

(A) means a community or location that it is not accessible by road from Anchorage or Fairbanks; or that is accessible only by crossing international boundaries;

(B) does not include a community or location that is on a road system that connects two or more communities or locations, and the supervising registered nurse is available in one of the communities or locations.

(12) "service animal" means an animal that is trained to assist an individual with a physical condition, and that is certified by a school or training facility for service animals as having completed necessary training.

(Eff. 2/1/2010, Register 193; am 1/26/2012, Register 201; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030

## Chapter 160.

### Medicaid Program; General Provisions.

#### Sec 900. Requirements adopted by reference.

7 AAC 160.900(d)(29) is amended to read

(29) the *Personal Care Services* [ASSISTANCE] *Service Level Computation*, revised as of **January 27, 2016;** [MARCH 20, 2012;]

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

(54) the *Personal Care Services Provider Conditions of Participation*, dated May 23, 2016.

(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 5/18/2014, Register 210; am 2/26/2015, Register 213; am 3/15/2015, Register 213; am 7/1/2015, Register 214; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

AS 47.05.012