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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Triptaa Surve
Department of Health & Social Services

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: March 10, 2017

RE: Filed Permanent Regulations: Department of Health & Social Services

Department of Health and Social Services regulations re: opioid use disorder treatment programs, methadone programs, behavioral health services, and related Medicaid coverage and payment (7 AAC 12.880(f); 7 AAC 33; 7 AAC 70.010(a); 7 AAC 70.030(a)(1),(c); 7 AAC 70.050(2)(A); 7 AAC 70.100(a); 7 AAC 70.125; 7 AAC 70.130(1); 7 AAC 70.910; 7 AAC 70.990; 7 AAC 135.010(c); 7 AAC 135.040(c); 7 AAC 135.580(a); 7 AAC 160.990(b))

Attorney General File:	JU2016200745
Regulation Filed:	3/10/2017
Effective Date:	4/9/2017
Print:	222, July 2017

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTEMENT OF HEALTH & SOCIAL SERVICES

The attached 18 pages of regulations, dealing with Opioid Treatment Program Requirements, are adopted and certified to be a correct copy of the regulation changes that the Department of Health & Social Services adopts under the authority of AS 47.05.010, AS 47.05.012, AS 47.07.030, AS 47.07.040, AS 47.07.055, AS 47.30.470, AS 47.30.475, AS 47.30.477, AS 47.30.530, AS 47.30.540, AS 47.30.570, and AS 47.37.140, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Health & Social Services paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect [on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 3-8-17



Jon Sherwood, Deputy Commissioner
Department of Health & Social Services

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that¹ on March 10,
20 17, at 10:00 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.



Byron Mallott, Lieutenant Governor

Effective: April 9, 2017

Register: 222, July 2017

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7 AAC 12.880(f) is amended to read:

(f) If outpatient substance abuse followup treatment is provided, the outpatient service must comply with 7 AAC 12.220(c)(5) and **7 AAC 70** [7 AAC 33.005 - 7 AAC 33.165]. (Eff. 11/19/83, Register 88; am 4 / 9 / 2017, Register 222)

Authority: AS 18.05.040 [AS 18.20.010] [AS 18.20.060]

7 AAC 33.005 is repealed:

7 AAC 33.005. State approval required for methadone programs. Repealed. (Eff. 10/10/74, Register 51; am 6/2/94, Register 130; am 6/24/2004, Register 170; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.015 is repealed:

7 AAC 33.015. Preparation of treatment plans. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.025 is repealed:

7 AAC 33.025. Evaluation of programs. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.035 is repealed:

7 AAC 33.035. Identification and confidentiality. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

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7 AAC 33.045 is repealed:

7 AAC 33.045. Organization and fiscal responsibility. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.055 is repealed:

7 AAC 33.055. Methadone staff requirements. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.065 is repealed:

7 AAC 33.065. Criteria for patient selection. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.075 is repealed:

7 AAC 33.075. Program rules and patient instructions. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.085 is repealed:

7 AAC 33.085. Methadone dosage levels. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.095 is repealed:

7 AAC 33.095. Take-home medication procedures. Repealed. (Eff. 10/10/74, Register

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51; am 6/24/2004, Register 170; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.105 is repealed:

7 AAC 33.105. Requirements for methadone preparation, record keeping, and security of stocks. Repealed. (Eff. 10/10/74, Register 51; am 6/24/2004, Register 170; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.115 is repealed:

7 AAC 33.115. Procedures for confined patients. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.125 is repealed:

7 AAC 33.125. Urinalysis procedures. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.135 is repealed:

7 AAC 33.135. Patient record requirements. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 / 2017, Register 222)

7 AAC 33.140 is repealed:

7 AAC 33.140. Records; reports to the department. Repealed. (Eff. 9/23/2004, Register 171; repealed 4 / 9 / 2017, Register 222)

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7 AAC 33.142 is repealed:

7 AAC 33.142. Records; closure of methadone program. Repealed. (Eff. 9/23/2004, Register 171; repealed 4 / 9 /2017, Register 222)

7 AAC 33.145 is repealed:

7 AAC 33.145. Treatment termination procedures. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 /2017, Register 222)

7 AAC 33.155 is repealed:

7 AAC 33.155. General provisions. Repealed. (Eff. 10/10/74, Register 51; am 6/24/2004, Register 170; repealed 4 / 9 /2017, Register 222)

7 AAC 33.165 is repealed:

7 AAC 33.165. Definitions. Repealed. (Eff. 10/10/74, Register 51; repealed 4 / 9 /2017, Register 222)

7 AAC 70.010(a)(1)(B) is amended to read:

(B) a substance use treatment provider receiving money from the department under AS 47.30.475 or AS 47.37.045;

7 AAC 70.010(a)(2) is amended to read:

(2) a substance use treatment provider that is subject to the requirements of

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AS 47.37, but does not receive money under AS 47.37, including **an opioid use disorder treatment program or** a substance use treatment provider that provides treatment to individuals referred by an alcohol safety action program; in this paragraph, "treatment" does not include services designed solely to provide support, advocacy, education, referral, or other assistance navigating the behavioral health services available to the recipient; and

(Eff. 10/1/2011, Register 199; am 4 / 9 / 2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.477	AS 47.30.570
	AS 47.30.470	AS 47.30.530	AS 47.37.140
	AS 47.30.475	AS 47.30.540	

7 AAC 70.030(a)(1) is amended to read:

(1) meets the requirements for

(A) a community behavioral health services provider under 7 AAC

70.100 that is providing one or more of the following:

(i) behavioral health clinic services;

(ii) behavioral health rehabilitation services;

(iii) detoxification services;

(iv) residential substance use treatment services in accordance

with 7 AAC 70.120; [OR]

(v) opioid use disorder treatment services; or

(B) a substance use treatment provider under 7 AAC 70.130; and

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7 AAC 50.030(e) is amended to read:

(e) The department will issue a provisional approval under (d) of this section for **up to** [A FIXED PERIOD OF] two years from the date the department issued the provisional approval.

However, the department will issue an opioid use disorder treatment program a provisional approval for a maximum of only one year.

(Eff. 10/1/2011, Register 199; am 4 / 9 / 2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.477	AS 47.30.570
	AS 47.30.470	AS 47.30.530	AS 47.37.140
	AS 47.30.475	AS 47.30.540	

7 AAC 70.050(2)(A) is amended to read:

(A) a maladaptive pattern of substance use, **including use of a narcotic drug that may require opioid use disorder treatment services;** or

(Eff. 10/1/2011, Register 199; am 6/16/2016, Register 218; am 4 / 9 / 2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.477	AS 47.30.570
	AS 47.30.470	AS 47.30.530	AS 47.37.140
	AS 47.30.475	AS 47.30.540	

7 AAC 70.100(a) is amended to read:

(a) To be approved by the department as a community behavioral health services provider, a provider

(1) must be a city, borough, or other political subdivision of the state or a

nonprofit corporation;

(2) must be receiving money from the department under AS 47.30.475 or 47.30.520 - 47.30.620;

(3) if providing behavioral health clinic services, must have a documented formal agreement with a physician for the purpose of providing general direction and direct clinical services;

(4) must collect and report the statistics, service data, and other information requested by the department under AS 47.30.477, 47.30.530, AS 47.37.040, or 47.37.140;

(5) must participate in the department's service delivery planning as required under AS 47.30.540 or AS 47.37.140(d);

(6) must maintain a clinical record for each recipient in accordance with the standards used for the Medicaid program under 7 AAC 105.230 and 7 AAC 135.130;

(7) must have policies and procedures in place that incorporate the recipient's personal financial circumstances when determining the amount a recipient is required to pay for services;

(8) may not deny treatment to an otherwise eligible recipient due to the recipient's inability to pay for the service;

(9) may not supplant local funding available to pay for behavioral health services or programs with money received under AS 47.30.475, 47.30.520 - 47.30.620, or AS 47.37;

(10) must be a dual diagnosis capable program or dual diagnosis enhanced program;

(11) if providing detoxification services, must meet the additional requirements of

7 AAC 70.110; [AND]

(12) if providing residential substance use treatment services, must meet the additional requirements of 7 AAC 70.120; **and**

(13) if providing opioid use disorder treatment services, must meet the additional requirements of 7 AAC 70.125.

(Eff. 10/1/2011, Register 199; am 4 / 9 / 2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.477	AS 47.30.570
	AS 47.30.470	AS 47.30.530	AS 47.37.140
	AS 47.30.475	AS 47.30.540	

7 AAC 70 is amended by adding a new section to read:

7 AAC 70.125. Additional requirements for providing opioid use disorder treatment services. (a) To be approved by the department to provide opioid use disorder treatment services, a community behavioral health services provider described in 7 AAC 70.010(a)(1)(B) or a substance use treatment provider described in 7 AAC 70.010(a)(2) must

(1) comply with each requirement of 42 C.F.R. Part 8, adopted by reference in 7 AAC 70.910;

(2) be accredited or working toward accreditation in accordance with 7 AAC 70.150;

(3) be certified under 42 C.F.R. Part 8 by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA);

(4) be registered with the federal Drug Enforcement Administration;

(5) have a valid drug room license from the Board of Pharmacy under 12 AAC 52.800(a);

(6) provide a comprehensive range of medical and behavioral health clinic and rehabilitative services that address addiction and addictive behavior;

(7) cooperate with the Department of Corrections to assist with opiate withdrawal or maintenance treatment of a recipient in custody;

(8) cooperate with the attending physician and hospital staff to continue opioid treatment services upon hospitalization of a recipient; and

(9) adhere to the *Federal Guidelines for Opioid Treatment Programs*, adopted by reference in 7 AAC 70.910.

(b) All opioid use disorder treatment services, including behavioral health clinic and rehabilitation services, must be medically necessary and clinically appropriate in accordance with the

(1) *ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, adopted by reference in 7 AAC 70.910;

(2) *Diagnostic and Statistical Manual of Mental Disorders*, adopted by reference in 7 AAC 70.910; and

(3) *International Classification of Diseases - 10th Revision, Clinical Modification (ICD-10-CM)*, adopted by reference in 7 AAC 70.910.

(c) Unless a recipient voluntarily terminates participation in the opioid use disorder treatment program, the provider may not withdraw opioid use disorder treatment services earlier than 21 days after beginning treatment. However, the medical director may impose a withdrawal

of services after fewer than 21 days, and without the recipient's voluntary termination of participation, if withdrawal of services is medically necessary for the safety and well-being of the recipient. The provider shall have written withdrawal procedures for withdrawing services from a recipient without the recipient's voluntary termination of participation. The provider shall explain those procedures to the recipient before imposing them.

(d) Services must be available to assure the reasonable continuity of care of each recipient. Hours of operation must reasonably consider and accommodate recipient schedules, including schedules for transportation, school, homemaking, employment, and child care, and in reasonable consideration of the provider's operational costs. In order to meet the requirements under this subsection, a provider shall ensure that

(1) services are made available at least six days a week, 52 weeks a year, with the exception of closures on state and federal holidays; a provider shall inform the department of the provider's published hours of operation, including holidays and other scheduled closures;

(2) the provider offers medication dispensing Monday through Friday during a regular 9:00 a.m. - 5:00 p.m. business day; and

(3) medication dispensing is scheduled for hours needed to reasonably accommodate recipient needs, including on Saturdays, on Sundays, and after the business day under (2) of this subsection if indicated by recipient needs.

(e) For an emergency leading to temporary closure of an opioid use disorder treatment program, an up-to-date plan for emergency administration of medications must be maintained. The plan must

(1) provide for the capability to respond to emergencies on a 24-hour basis; and

(2) identify an alternative dosing location that

(A) is secured in advance; and

(B) complies with registration requirements of the federal Drug

Enforcement Administration.

(f) In this section, "medical director" has the meaning given in 42 C.F.R. 8.2, adopted by reference in 7 AAC 70.910. (Eff. 4/9/2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.477	AS 47.30.570
	AS 47.30.470	AS 47.30.530	AS 47.37.140
	AS 47.30.475	AS 47.30.540	

7 AAC 70.130(1) is amended to read:

(1) meet the requirements of

(A) this section;

(B) 7 AAC 70.110, if providing detoxification services; [AND]

(C) 7 AAC 70.120, if providing residential substance use treatment

services; **and**

(D) 7 AAC 70.125, if providing opioid use disorder treatment services;

(Eff. 10/1/2011, Register 199; am 4/9/2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.530	AS 47.37.140
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7 AAC 70.910 is amended to read:

7 AAC 70.910. Requirements adopted by reference. The following documents

referenced in this chapter are adopted by reference:

- (1) American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, June 2013 (DSM-5), as amended from time to time;
- (2) American Society of Addiction Medicine, *ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, Third Edition, 2013;
- (3) the *Revised Clinical Institute Withdrawal Assessment for Alcohol Scale (CIWA-Ar)*, originally published in the *British Journal of Addiction* (1989), Volume 84;
- (4) the *Clinical Opiate Withdrawal Scale (COWS)*, originally published in the *Journal of Psychoactive Drugs*, Volume 35, Number 2, April-June 2003; [.]
- (5) *International Classification of Diseases - 10th Revision, Clinical Modification (ICD-10-CM)*, 2016 revision, as amended from time to time;
- (6) Zero to Three: National Center for Infants, Toddlers, and Families, *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood: Revised Edition (DC:0-3R)*, revised as of 2005;
- (7) 42 C.F.R. Part 8 (certification of opioid treatment programs), revised as of October 1, 2015;**
- (8) United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Federal Guidelines for Opioid Treatment Programs, HHS Publication No. (SMA) PEP15-FEDGUIDEOTP, dated March 2015.** (Eff. 10/1/2011, Register 199; am 6/16/2016, Register 218; am 4 / 9 / 2017, Register 222)

Authority: AS 47.05.010 AS 47.30.475 AS 47.30.540

AS 47.05.012

AS 47.30.477

AS 47.30.570

AS 47.30.470

AS 47.30.530

AS 47.37.140

Editor's note: The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, adopted by reference in 7 AAC 70.910, and the *International Classification of Diseases - 10th Revision, Clinical Modification (ICD-10)*, adopted by reference in 7 AAC 70.910, may be obtained by contacting the Order Department, American Medical Association, P.O. Box 930876, Atlanta, Georgia 31193-0876, or by visiting the AMA Bookstore at Internet address: <https://catalog.ama-assn.org/Catalog/home.jsp>. The *Diagnostic and Statistical Manual of Mental Disorders (DSM)* publication may also be obtained from American Psychiatric Association - Publishing, Inc., 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209-3901, telephone (703) 907-7322 or (800) 368-5777; or from the American Psychiatric Association - Publishing at the following Internet address: <https://appi.org>. The publications may also be available at other retail book sellers. A copy of each publication is available for examination at the Department of Health and Social Services, Division of Health Care Services, 4501 Business Park Boulevard, Suite 24, Anchorage, Alaska 99503-7167; Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, Alaska 99503-7167; or the Office of the Commissioner, 350 Main Street, Juneau, Alaska 99801.

The *ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, adopted by reference in 7 AAC 70.910, may be obtained from the American Society of Addiction Medicine, Inc., 4601 N. Park Avenue, Upper Arcade, Suite 101, Chevy Chase, Maryland 20815; telephone (888) 889-8866; Internet address: www.asam.org. A

copy of the publication is available for examination at the Department of Health and Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, Alaska 99503-7167.

The Revised Clinical Institute Withdrawal Assessment for Alcohol Scale (CIWA-Ar), adopted by reference in 7 AAC 70.910, is in the public domain and may be obtained from many different sources. A copy may be obtained by contacting the Department of Health and Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, Alaska 99503-7167.

The Clinical Opiate Withdrawal Scale (COWS), adopted by reference in 7 AAC 70.910, is in the public domain and may be obtained from many different sources. A copy may be obtained by contacting the Department of Health and Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, Alaska 99503-7167.

A copy of the *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood: Revised Edition (DC:0-3R)*, adopted by reference in 7 AAC 70.910, is available for examination at the Department of Health and Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, Alaska 99503-7167.

The Federal Guidelines for Opioid Treatment Programs, adopted by reference in 7 AAC 70.910, is in the public domain and may be obtained from United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) publications ordering webpage at <http://store.samhsa.gov>. A copy may be obtained by contacting the Department of Health and Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, Alaska 99503-7167.

On February 2, 2016, as required by AS 44.62.245 and AS 47.05.012, the department gave notice that the following amended version of material, previously adopted by reference in 7 AAC 70.910, would be in effect in June 2013: the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition, June 2013 (*DSM-5*). The amended version may be reviewed at the Department of Health and Social Services, Division of Behavioral Health, 3601 C Street, Anchorage, Alaska, 99503. The *DSM-5* may also be obtained from the American Psychiatric Association - Publishing, Inc., 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209-3901, telephone (703) 907-7322 or (800) 368-5777; or from the American Psychiatric Association - Publishing, Inc. at the following Internet address: <https://appi.org>.

7 AAC 70.990 is amended by adding a new paragraph to read:

(35) "opioid use disorder treatment program" means an individual or entity that

(A) administers or dispenses a narcotic drug to a narcotic addict for withdrawal or maintenance treatment;

(B) provides to individuals when appropriate or necessary a comprehensive range of medical and behavioral health clinical and rehabilitative services; and

(C) is approved under this chapter. (Eff. 10/1/2011, Register 199; am 6/16/2016, Register 218; am 4 / 9 / 2017, Register 222)

Authority:	AS 47.05.010	AS 47.30.540	AS 47.37.130
	AS 47.30.477	AS 47.30.570	AS 47.37.140

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AS 47.30.530

7 AAC 85.010(a)(6) is amended to read:

(6) **an opioid use disorder treatment** [A METHADONE] program approved under **7 AAC 70** [7 AAC 33].

(Eff. 9/23/2004, Register 171; am 4/9/2017, Register 222)

Authority:	AS 18.05.040	AS 47.30.475	AS 47.30.660
	AS 18.23.100	AS 47.30.477	AS 47.31.090
	AS 47.05.010	AS 47.30.530	AS 47.37.030
	AS 47.07.030	AS 47.30.540	AS 47.37.040
	AS 47.07.040	AS 47.30.590	AS 47.37.140

7 AAC 135.010(c)(12) is amended to read:

(12) behavioral health treatment plan review for a recipient in **an opioid use disorder** [A METHADONE] treatment program;

(Eff. 10/1/2011, Register 199; am 4/9/2017, Register 222)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 135.040(c)(9) is amended to read:

(9) one medical evaluation of a recipient in **an opioid use disorder** [A METHADONE] treatment program per admission for that **opioid use disorder** [METHADONE] treatment program, including

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- (A) consultation and referral;
- (B) verification of one year of addiction; and
- (C) establishing dosage for methadone or another agonist or partial agonist [DOSAGE];

7 AAC 135.040(c)(14) is amended to read:

(14) behavioral health treatment plan review for a recipient in an opioid use disorder [A METHADONE] treatment program, limited to one review per admission;

(Eff. 10/1/2011, Register 199; am 4/9/2017, Register 222)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 145.580(a)(24) is amended to read:

(24) behavioral health treatment plan review for a recipient in an opioid use disorder [A METHADONE] treatment program, \$75 per review;

7 AAC 145.580(a)(30) is amended to read:

(30) medical evaluation of a recipient in an opioid use disorder [A METHADONE] treatment program, \$397.71 per evaluation;

(Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 4/9/2017, Register 222)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

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7 AAC 160.990(b)(96) is repealed:

(96) repealed 4/9/2017;

7 AAC 160.990(b) is amended by adding a new paragraph to read:

(106) "opioid use disorder treatment program" means an individual or entity that

(A) administers or dispenses a narcotic drug to a narcotic addict for withdrawal or maintenance treatment;

(B) provides to individuals when appropriate or necessary a comprehensive range of medical and behavioral health clinical and rehabilitative services; and

(C) is approved under 7 AAC 70. (Eff. 2/1/2010, Register 193; am 7/7/2010, Register 195; am 1/1/2011, Register 196; am 10/1/2011, Register 199; am 4/1/2012, Register 201; am 7/1/2013, Register 206; am 5/18/2014, Register 210; am 6/16/2016, Register 218; am 4/9/2017, Register 222)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.055

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: March 9, 2017

File No.: JU2016200745

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Department of Health and Social
Services regulations re: opioid use
disorder treatment programs,
methadone programs, behavioral
health services, and related Medicaid
coverage and payment (7 AAC
12.880(f); 7 AAC 33; 7 AAC
70.010(a); 7 AAC 70.030(a)(1), (e);
7 AAC 70.050(2)(A); 7 AAC
70.100(a); 7 AAC 70.125; 7 AAC
70.130(1); 7 AAC 70.910; 7 AAC
70.990; 7 AAC 135.010(c); 7 AAC
135.040(c); 7 AAC 135.580(a);
7 AAC 160.990(b))

We have reviewed the attached regulations from the Department of Health and Social Services against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated March 9, 2017 from the Regulations Attorney. The regulations establish requirements and procedures regarding opioid use disorder treatment programs and related Medicaid coverage and payment, make conforming changes, and repeal obsolete methadone program regulations formerly set out in 7 AAC 33.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016200745

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The October 11, 2016 public notice and the March 8, 2016 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SCW

cc w/enc: (via email)

Hon. Valerie "Nurr'araaluk" Davidson, Commissioner
Department of Health and Social Services

Triptaa Surve, Regulations Contact
Department of Health and Social Services

Jon Sherwood, Deputy Commissioner
Department of Health and Social Services

Rick Calcote
Division of Behavioral Health
Department of Health and Social Services

Alex J. Hildebrand, Assistant Attorney General
Human Services Section

MEMORANDUM


State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: March 9, 2017

FILE NO.: JU2016200745

TELEPHONE NO.: (907) 465-3600

FROM: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority regarding review of regulations regarding opioid use disorder treatment programs, methadone programs, behavioral health services, and related Medicaid coverage and payment (7 AAC 12.880(f); 7 AAC 33; 7 AAC 70.010(a); 7 AAC 70.030(a)(1), (e); 7 AAC 70.050(2)(A); 7 AAC 70.100(a); 7 AAC 70.125; 7 AAC 70.130(1); 7 AAC 70.910; 7 AAC 70.990; 7 AAC 135.010(c); 7 AAC 135.040(c); 7 AAC 135.580(a); 7 AAC 160.990(b))

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and
Assistant Regulations Attorney
Legislation/Regulations Section—Juneau

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Triptaa Surve, Project Coordinator, of Department of Health & Social Services, being sworn, state the following:

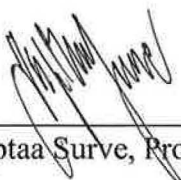
As required by AS 44.62.190, notice of the proposed adoption of changes to 7 AAC 33, 70, 135, & 160, and dealing with Opioid Treatment Program Requirements, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Health & Social Services and Finance Committees of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date:

FEBRUARY 7, 2017.

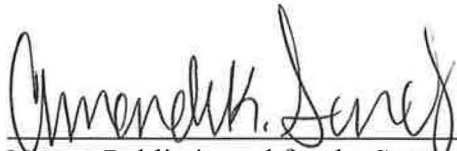


Triptaa Surve, Project Coordinator

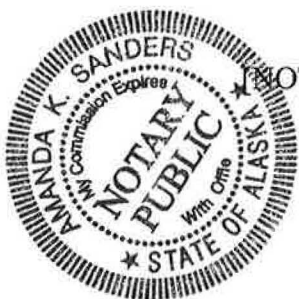
Subscribed and sworn to before me at DHSS Commissioners office on

2/7/17

(date)



Notary Public in and for the State of Alaska



[NOTARY SEAL]

NOTICE OF PROPOSED CHANGES ON OPIOID TREATMENT PROGRAM REQUIREMENTS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on the opioid treatment program requirements and repeal regulations related to Methadone Programs.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with the opioid treatment program requirements, including the following:

- (1) 7 AAC is proposed to be changed as follows:
 - In Chapter 70 make changes, including to, modify requirements for providers, add opioid use disorder treatment services, create an obligation for providers of these opioid treatment services to meet Department approval requirements, add a new section that lists the specific program requirements for these opioid use treatment services and adopt documents by reference related to substance abuse treatment.
 - Add new conforming terminology to Chapter 135 and to Chapter 160.
- (2) 7 AAC 33.005 – 33.165, is proposed to be repealed.
 - The intended effect of this repeal is to remove outdated service requirements and to comply with current Federal law.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Rick Calcote, Department of Health & Social Services, Division of Behavioral Health at 3601 C Street, Suite 878, Anchorage, AK 99503. Additionally, the Department of Health & Social Services will accept comments by facsimile at (907) 269-3623 and by electronic mail at hss.dbh.publiccomments@alaska.gov. The comments must be received not later than 5:00 p.m. on November 28, 2016.

Oral or written comments also may be submitted at a hearing to be held on Monday, November 14, 2016, at the Frontier Building, Conference Room Number 880, 3601 C St., Anchorage, AK 99503. The hearing will be held from 1 p.m. – 4 p.m. and might be extended to accommodate those present before 3 p.m. who did not have an opportunity to comment. If you are unable to attend in person, but would like to comment during the oral public hearing, you can call the teleconference number (800) 315-6338 (Toll Free) and use the code 36171#.

You may submit written questions relevant to the proposed action to Rick Calcote by e-mail at rick.calcote@alaska.gov or at 3601 C Street, Suite 880, Anchorage, AK 99503. The questions must be received at least 10 days before the end of the public comment period. The Department of Health & Social Services will aggregate its response to substantially similar questions and make the questions and response available on <http://dhss.alaska.gov/dbh/Pages/default.aspx> and the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, including the hearing, please contact Rick Calcote at rick.calcote@alaska.gov or at (907) 269-3617, or by facsimile at (907) 269-3623, or via Alaska Relay at 711 or (800) 770-8973 (TTY) no later than November 10, 2016, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Rick Calcote at rick.calcote@alaska.gov or at (907) 269-3617.

A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System <https://aws.state.ak.us/OnlinePublicNotices/>. A copy of material proposed for adoption by reference may be viewed at the agency's office at the Department of Health & Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, AK 99503.

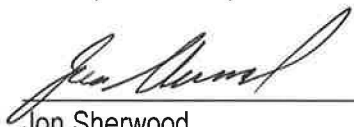
After the public comment period ends, the Department of Health & Social Services, will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 47.05.010; AS 47.05.012; AS 47.07.030; AS 47.07.040; AS 47.07.055; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.37.140.

Statutes Being Implemented, Interpreted, or Made Specific: AS 18.05.040; AS 18.23.100; AS 47.05.010; AS 47.05.012; AS 47.07.030; AS 47.07.040; AS 47.07.055; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.37.140.

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 10-7-16



Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

NOTICE OF PROPOSED CHANGES ON OPIOID TREATMENT PROGRAM REQUIREMENTS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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DATE: 10-7-16


Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Department of Health & Social Services
2. General subject of regulation: Opioid Treatment Program Requirements/Behavioral Health Services, Medicaid Coverage, Medicaid Program
3. Citation of regulation (may be grouped): 7 AAC 33, 7 AAC 70, 7 AAC 135, 7 AAC 160
4. Department of Law file number, if any: JU2016200745
5. Reason for the proposed action:
☒ (X) Compliance with federal law or action (identify): 42 CFR, Part 8
☐ () Compliance with new or changed state statute
☐ () Compliance with federal or state court decision (identify): _____
☐ () Development of program standards
☐ () Other (identify): _____
6. Appropriation/Allocation: N/A
7. Estimated annual cost to comply with the proposed action to: None.

A private person: -0-
Another state agency: -0-
A municipality: -0-
8. Cost of implementation to the state agency and available funding (in thousands of dollars): None.

	Initial Year FY <u>17</u>	Subsequent Years
Operating Cost	\$ <u>-0-</u>	\$ <u>-0-</u>
Capital Cost	\$ <u>-0-</u>	\$ <u>-0-</u>
1002 Federal receipts	\$ <u>-0-</u>	\$ <u>-0-</u>
1003 General fund match	\$ <u>-0-</u>	\$ <u>-0-</u>
1004 General fund	\$ <u>-0-</u>	\$ <u>-0-</u>
1005 General fund/ program	\$ <u>-0-</u>	\$ <u>-0-</u>
Other (identify)	\$ _____	\$ _____

9. The name of the contact person for the regulation:

Name: Rick Calcote
Title: Mental Health Clinician III
Address: 3601 C Street, Suite 878, Anchorage, AK. 99503
Telephone: 907-269-3617
E-mail address: rick.calcote@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

- 11.

Date: Oct 7, 2016

Prepared by: Rick Calcote, MS

Name (printed): Rick Calcote
Title (printed): Mental Health Clinician III
Telephone: 907-269-3617

AFFIDAVIT OF ORAL HEARING

I, Rick Calcote, MH Clinician III of DHSS/Behavioral Health, being sworn, state the following:

On November 14, 2016, at 1pm, in Room 880, Frontier Bldg., 3601 C. St., Anchorage, AK, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 7 AAC Chapters 33, 70, 135 and 160, Opioid Treatment Program Requirements.

Date: February 17, 2017

Rick Calcote, MH

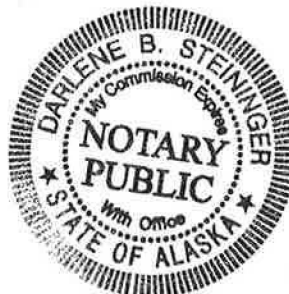
Rick M. Calcote, MH Clinician III

Subscribed and sworn to before me at 3601 C St, Suite 878, Anchorage, AK on 2/17/17
(date)

Darlene B. Steininger

Notary Public in and for the State of Alaska

[NOTARY SEAL]



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Rick Calcote, MH Clinician III for the DHSS/Division of Behavioral Health, being duly sworn, state the following:

In compliance with AS 44.62.215, the DHSS/Division of Behavioral Health has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the DHSS/Division of Behavioral Health regulation on Opioid Treatment Program Requirements.

Date: January 4, 2017

Rick Calcote, DHS
Rick M. Calcote, MH Clinician III

Subscribed and sworn to before me at 3601 C St, Suite 878 Anchorage on
1/4/17
(date)

Darlene Steininger
Notary Public in and for the State of Alaska

[NOTARY SEAL]



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AFFIDAVIT OF PUBLICATION

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Emma Dunlap

being first duly sworn on oath deposes and says that he/she is a representative of the Alaska Dispatch News, a daily newspaper. That said newspaper has been approved by the Third Judicial Court, Anchorage, Alaska, and it now and has been published in the English language continually as a daily newspaper in Anchorage, Alaska, and it is now and during all said time was printed in an office maintained at the aforesaid place of publication of said newspaper. That the annexed is a copy of an advertisement as it was published in regular issues (and not in supplemental form) of said newspaper on

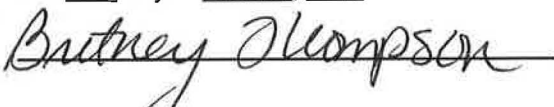
October 11, 2016

and that such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is not in excess of the rate charged private individuals.

Signed



Subscribed and sworn to before me
this 11th day of October, 2016



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

Notary Public
BRITNEY L. THOMPSON
State of Alaska
Commission Expires Feb 23, 2019

NOTICE OF PROPOSED CHANGES ON OPIOID TREATMENT PROGRAM REQUIREMENTS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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If interested, inquire at 907-562-5408, fax resume to 907-561-5049, or fill out an application at 660 E. 48th Avenue in Anchorage. Contact person: Kathy Johnson.

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makes sure that safety procedures are maintained at all times.
loading of trucks and ensures proper handling of merchandise. Also
items for shipping. Prepares shipments for delivery. Supervises