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**OFFICE OF THE LIEUTENANT GOVERNOR
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M E M O R A N D U M

TO: Triptaa Surve
Department of Health & Social Services

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: October 9, 2017

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

Department of Health and Social Services regulation re: Medicaid coverage and payment, home and community-based waiver services, and person-centered services and settings (7 AAC 130; 7 AAC 160.900(d))

Attorney General File:	JU2017200102
Regulation Filed:	10/6/2017
Effective Date:	11/5/2017
Print:	224, January 2018

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

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The attached 35 pages of regulations, dealing with Medicaid home and community-based waiver services, person-centered practices, and settings 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, and AS 47.07.045, 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: 10-2-17



Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that¹ on October 6, 2017, at 200 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Byron Mallott
Lieutenant Governor

Effective: November 5, 2017

Register: 224, January 2018

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7 AAC 130.200 is amended to read:

7 AAC 130.200. Purpose. The purpose of this chapter is to offer to individuals that meet the eligibility criteria in 7 AAC 130.205 the opportunity to choose to receive home and community-based waiver services as an alternative to institutional care. Those services, when implemented through a person-centered plan of care, provide opportunities for eligible individuals to receive services in the community and to maximize engagement in community life. The individual, those individuals chosen by the individual to participate in service planning, and the providers selected by the individual to render services, work in collaboration to align services and supports in a person-centered practice that provides the full benefits of community living, and contributes to the achievement of the individual's goals. (Eff. 2/1/2010, Register 193; am 11/3/2012, Register 204; am 7/1/2013, Register 206; am 11 / 5 /2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

7 AAC 130.202 is amended to read:

7 AAC 130.202. Services provided by family members. Home and community-based waiver services covered under this chapter do not include services provided by the spouse of the recipient, the parent of a minor child that is the recipient, an individual with a legal duty to support the recipient under state law, or the recipient's legal representative. For purposes of this section, a foster parent is not an individual with a legal duty to support a recipient placed in the care of that foster parent by the department [(1) AN IMMEDIATE FAMILY

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MEMBER OF A RECIPIENT TO THE RECIPIENT; OR (2) A GUARDIAN TO A WARD, UNLESS A COURT HAS AUTHORIZED THE GUARDIAN TO PROVIDE THOSE SERVICES UNDER AS 13.26.145(c)].

7 AAC 130.202 is amended by adding a new subsection to read:

(b) Notwithstanding (a) of this section, a court-appointed guardian may provide home and community-based services to a recipient if

(1) the court authorizes the guardian to provide those services under AS 13.26.167(2) or AS 13.26.311(c); and

(2) the guardian is qualified to provide those services and employed by a provider certified under 7 AAC 130.220(a)(1) or (3). (Eff. 2/1/2010, Register 193; am 11/3/2012, Register 204; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.040

7 AAC 130.205(b)(1) is amended to read:

(1) while the individual is an inpatient of a nursing facility, a hospital, or an **intermediate care facility for individuals with an intellectual disability or related condition** (ICF/IID), except for **review of an application** [SCREENING] under 7 AAC 130.211 or assessment under 7 AAC 130.213; or

(Eff. 2/1/2010, Register 193; am 11/3/2012, Register 204; am 7/1/2013, Register 206; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045

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AS 47.07.030

7 AAC 130.209(d) is amended to read:

(d) Not later than 15 days after the date of the department's notice to the recipient and the recipient's care coordinator that the recipient meets the level-of-care requirement, the recipient's care coordinator shall submit a plan of care to the department for approval in accordance with 7 AAC 130.217 **and 7 AAC 130.218**.

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045

AS 47.07.030

7 AAC 130.211 is amended to read:

7 AAC 130.211. Screening of applications. (a) The department will pay for and review, in any 365-day period, one **application** [SCREENING OF AN APPLICANT] for home and community-based waiver services to determine whether there is a reasonable indication that the applicant might need services at a level of care provided in a hospital, nursing facility, or ICF/IID in 30 or fewer days unless the applicant receives home and community-based waiver services under this chapter. [THE DEPARTMENT WILL

(1) CONDUCT THE SCREENING;

(2) CONTRACT WITH ANOTHER ORGANIZATION TO CONDUCT THE SCREENING; OR

(3) OFFER THE APPLICANT THE OPPORTUNITY TO SELECT A CARE

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COORDINATOR OR OTHER PROVIDER APPROVED BY THE DEPARTMENT TO CONDUCT THE SCREENING.]

(b) **The** [IF A CARE COORDINATOR CONDUCTS THE SCREENING THE] care coordinator **selected by the applicant to assist with the application** shall

(1) inform the applicant regarding the care coordinator's relationship as an employee of any provider certified under 7 AAC 130.220 and of any relationship described in 7 AAC 130.240(f); and

(2) provide to the department **a complete application in accordance with 7 AAC 130.207(a), and relevant** [APPROPRIATE] and contemporaneous documentation that

(A) addresses each medical and functional condition that places the applicant into a recipient category listed in 7 AAC 130.205(d); and

(B) indicates the applicant's need for home and community-based waiver services.

(c) Following **notification of** a decision by the department that an applicant would not need services as specified in (a) of this section, the applicant may **submit** [REQUEST], and the department will pay for and review, another **application within the time period in (a) of this section, only** [SCREENING] if a material change in the applicant's condition occurred after **submission of** a prior **application** [SCREENING]. In this subsection, "material change in the applicant's condition" means an alteration in the applicant's health, behavior, or functional capacity of sufficient significance that the department is likely to reach a different decision regarding the applicant's need for home and community-based waiver services. (Eff. 7/1/2013, Register 206; am 11 / 5 / 2017, Register 224)

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Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045

AS 47.07.030

7 AAC 130.213 is repealed and readopted to read:

7 AAC 130.213. Assessment and reassessment. (a) If an application under 7 AAC 130.211 and supportive diagnostic documentation reasonably indicate the need for services described in 7 AAC 130.211(a), the department will conduct an assessment of the applicant's physical, emotional, and cognitive functioning to determine the

(1) recipient category under 7 AAC 130.205(d) for which the applicant is eligible; and

(2) level of care under 7 AAC 130.215 that the applicant requires.

(b) If an assessment indicates that an applicant meets the level-of-care requirement under 7 AAC 130.215, the department will send notice to the care coordinator for development of a plan of care in accordance with 7 AAC 130.217 and 7 AAC 130.218.

(c) To request a reassessment of a recipient's continuing need for home and community-based waiver services, the recipient must submit a new application with current information in accordance with 7 AAC 130.207 not later than 90 days before the expiration of the period covered by the preceding level-of-care approval. A new application is required in order to continue to receive home and community-based services after the expiration of the previous period.

(d) For recipients enrolled in the recipient categories specified in 7 AAC 130.205(d)(1), (2), and (4), if the new application indicates a need for continuing services, the department, not

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later than one year after the date of the previous assessment, will reassess a recipient to determine if the recipient continues to meet the eligibility requirements of 7 AAC 130.205(d) and level-of-care requirement under 7 AAC 130.215. After the reassessment, the department will notify the recipient, the recipient's representative, and the recipient's care coordinator of that determination, except that the department will perform an earlier reassessment if the department determines it necessary due to a material change related to the health, safety, and welfare of the recipient.

(e) For recipients enrolled in the recipient category specified in 7 AAC 130.205(d)(3), if the new application indicates a need for continuing services, the department will

(1) either

(A) reassess the recipient to determine if the recipient continues to meet the eligibility requirements of 7 AAC 130.205(d)(3) and the level-of-care requirement under 7 AAC 130.215(3); the department will schedule a reassessment on the basis of the age of the recipient or earlier if the department determines it necessary, as follows:

(i) annually for recipients at least three years of age and under seven years of age;

(ii) every three years for recipients at least seven years of age and under 22 years of age;

(iii) as necessary for recipients 22 years of age or older; or

(B) for each year an assessment is not conducted, conduct a file review and confer with the care coordinator for the recipient, to confirm that the recipient continues to meet the level-of-care requirement; if the review indicates that there has

been a material change in the recipient's condition, the department will conduct an assessment; in this subparagraph, "material change in the recipient's condition," with respect to a recipient, has the meaning given "material change in the applicant's condition" in 7 AAC 130.211(c); and

(2) after a reassessment or review under this subsection, notify the recipient, the recipient's representative, and the recipient's care coordinator of the department's determination.

(f) If the department finds, based on a reassessment under this section, that the recipient no longer requires the level of care described in 7 AAC 130.215, the department will

(1) forward the reassessment for review by an independent qualified health care professional in accordance with AS 47.07.045(b) and 7 AAC 130.219(e)(4); and

(2) notify the recipient and the recipient's care coordinator of the referral and extension of the notification timeframe under 7 AAC 130.207(c)(3).

(g) If the department determines that translation services for a non-English speaking applicant or interpretation services for a deaf applicant are necessary for an assessment or reassessment under this section, the department will secure and pay for those services.

(h) The department may schedule and conduct assessments and reassessments by videoconference for recipients that

(1) are located outside of the Municipality of Anchorage and the Fairbanks North Star Borough; and

(2) before scheduling, submit to the department

(A) an application in accordance with 7 AAC 130.207;

(B) in a format provided by the department, a consent for assessment or

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reassessment by videoconference; and

(C) in a format provided by the department, information about the residential setting of the applicant or recipient. (Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

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

(a) Not less than once every 12 months, the care coordinator shall submit a plan of care, based on the current needs of the recipient, the most recent assessment or reassessment conducted under 7 AAC 130.213, and the level-of-care determination made in accordance with 7 AAC 130.215. After an assessment or reassessment under 7 AAC 130.213, and after receiving the department's notice that the recipient meets the level-of-care requirement under 7 AAC 130.215, the care coordinator shall

(1) inform the recipient regarding

(A) the care coordinator's relationship as an employee of any provider certified under 7 AAC 130.220 and of any relationship described in 7 AAC 130.240(f);

(B) the full range of home and community-based waiver services and the names of all providers that offer those services; and

(C) the recipient's right to free choice of providers, including the option to choose another care coordinator to develop the recipient's plan of care; the care coordinator shall support the recipient in the recipient's exercising the right to free choice

of providers;

(2) consult, in person or by electronic mail, telephone, or videoconference, with each member of a planning team that meets the requirements of 7 AAC 130.218(b);

(3) prepare in writing, in a format provided by the department, a plan of care developed in accordance with this section and 7 AAC 130.218;

(4) secure the signature of

(A) the recipient or recipient's representative indicating that the recipient or recipient's representative

(i) agrees to the plan of care;

(ii) is aware of any relationship between the care coordinator and any provider certified under 7 AAC 130.220 and of any relationship described in 7 AAC 130.240(f);

(B) each provider representative indicating the provider agrees to render the services as specified in the plan of care; and

(C) each individual on the planning team to verify participation in the development of the recipient's plan of care; and

(5) submit the plan of care and supporting documentation to the department for approval; unless the care coordinator has submitted to the department written documentation of unusual circumstances that prevent timely completion of the plan of care, and the department has approved a later submission date, the care coordinator shall submit the plan of care not later than

(A) 60 days after the date of the department's notice to the recipient and the recipient's care coordinator that the recipient meets the level-of-care requirement in

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7 AAC 130.215;

(B) 30 days before expiration of the current plan year.

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045

AS 47.07.030

7 AAC 130 is amended by adding a new section to read:

7 AAC 130.218. Person-centered practice. (a) Based on capacity and interest in participation, the recipient of home and community-based waiver services shall lead the planning process that results in a plan of care under 7 AAC 130.217 and this section.

(b) The planning process must

(1) recognize and support the recipient as central to the process with the authority to specify goals and needs, to request meetings at times and locations convenient to the recipient, and to revise the plan of care when necessary;

(2) include the recipient, the recipient's representative, individuals chosen by the recipient to participate in the planning process, and the providers selected by the recipient to render home and community-based waiver services other than providers of

(A) transportation services under 7 AAC 130.290;

(B) environmental modification services under 7 AAC 130.300; or

(C) specialized medical equipment under 7 AAC 130.305;

(3) respond to recipient requests in a timely manner;

(4) reflect cultural considerations;

(5) provide information the recipient needs to make informed choices regarding services and supports; the information must be in plain language, and presented in a manner accessible to a recipient with disabilities or limited English proficiency; and

(6) include strategies for solving conflicts or disagreements that might arise during the process, including conflict-of-interest guidelines for all planning participants.

(c) The providers, selected in accordance with (d) of this section, must collaborate with the recipient, and with the individuals chosen by the recipient to participate in the planning process, to develop for the recipient a written, person-centered plan of care. The plan of care must

(1) address the clinical and support needs identified through a functional assessment conducted in accordance with 7 AAC 130.213;

(2) reflect the recipient's strengths and the recipient's preferences for delivery of services and supports;

(3) identify the elements important to the recipient to achieve the quality of life the recipient wishes, including the recipient's goals and desired outcomes;

(4) identify

(A) the services and supports, paid and unpaid, that will assist the recipient to achieve the recipient's goals and desired outcomes;

(B) the providers of those services and supports, including natural supports; and

(C) for each service

(i) the number of units, the frequency, and the projected duration

of that service; and

(ii) an analysis of whether the service and amount of that service is consistent with the assessment or reassessment conducted under 7 AAC 130.213, the level-of-care-determination made in accordance with 7 AAC 130.215, and any treatment plans developed for the recipient;

(5) document the options for services and supports that were offered to the recipient under (b)(5) of this section;

(6) reflect that the setting in which the recipient resides is chosen by the recipient;

(7) document any modification of the requirements for provider-owned or operated residential settings in accordance with 7 AAC 130.220(p);

(8) reflect the risk factors and measures in place to minimize risks, including an individualized backup plan;

(9) identify the individuals responsible for monitoring the plan;

(10) use plain language, and be written in a manner that is both accessible to a recipient with disabilities or limited English proficiency and makes the plan of care understandable by the recipient and the individuals important in supporting the recipient;

(11) be finalized and agreed to in accordance with 7 AAC 130.217(a)(4); any disagreement among planning team members about outcomes or service levels, or any suggestion by a team member that an outcome or service level should be different than the one established in the plan of care, must be documented and attached to the plan of care submitted to the department for consideration and approval; and

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(12) be distributed to the recipient and all others involved in developing the plan of care.

(d) The providers, recipient, and individuals chosen by the recipient to participate in the planning process must ensure that

(1) unnecessary or inappropriate services and supports are not included in the plan of care developed in accordance with (c) of this section; and

(2) the settings in which home and community-based services are rendered are integrated in, and support full access to, the greater community. (Eff. 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

7 AAC 130.219(b)(1) is amended to read:

(1) an applicant, determined eligible under 7 AAC 130.205, that the applicant may choose between home and community-based waiver services and institutional care in a nursing facility or ICF/IID; the applicant's choice of service must be documented **in a format provided** [ON A FORM APPROVED] by the department; and

7 AAC 130.219(c) is amended to read:

(c) The department will consider the recipient to be enrolled under this section after the recipient has

(1) **submitted an application** [APPLIED] under 7 AAC 130.207; [:]

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- (2) been **approved** [SCREENED] for assessment under 7 AAC 130.211;
- (3) been assessed under 7 AAC 130.213;
- (4) met the level-of-care requirement under 7 AAC 130.215; and
- (5) received an approved plan of care under 7 AAC 130.217 **and 7 AAC**

130.218.

7 AAC 130.219(e)(2) is amended to read:

(2) the department is unable to determine eligibility for home and community-based waiver services because the documentation required under 7 AAC 130.217 **and 7 AAC 130.218** as part of a reassessment to determine the recipient's continuing eligibility for services was not submitted by the recipient, the recipient's representative, or the recipient's care coordinator at least 30 days before expiration of the current plan year;

The introductory language of 7 AAC 130.219(e)(7) is amended to read:

(7) the recipient has a documented history of failing to cooperate with the delivery of services identified in the plan of care prepared under 7 AAC 130.217 **and 7 AAC 130.218**, or of placing caregivers or other recipients at risk of physical injury, and no other providers are willing to provide services to the recipient; for the purposes of this paragraph, a documented history exists if a provider

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7 AAC 130.219(e)(8) is amended to read:

(8) the recipient or the recipient's representative fails to take an action or to submit documentation required under 7 AAC 130.209 - 7 AAC 130.218 [7 AAC 130.209 - 7 AAC 130.217].

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11/5/2017, Register 224)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

7 AAC 130.220(b) is amended to read:

(b) To receive payment for home and community-based waiver services, a provider must enroll in the Medicaid program under 7 AAC 105.210 and must be certified under this section. To be certified by the department, a provider [(1)] must submit, in a format provided by the department, a complete [AN] application, and

(1) to provide services at an in-state location,

(A) must meet the applicable certification criteria, including the provider qualifications and program standards, set out in the department's Home and Community-Based Waiver Services Provider Conditions of Participation, adopted by reference in 7 AAC 160.900; and

(B) [(2)] for each service the provider plans to offer to recipients of home and community-based waiver services, must comply with the provisions of this chapter applicable to each service and with the conditions of participation [CONDITIONS-OF-PARTICIPATION DOCUMENT] adopted by reference in 7 AAC 160.900 and

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applicable to that service; or

(2) to provide services at an out-of-state location,

(A) must meet all applicable Medicaid home and community-based waiver services certification and licensing requirements of the jurisdiction in which the provider is located;

(B) must meet all applicable Medicaid home and community-based waiver services provider qualification and program standards of that jurisdiction;

(C) may provide to a recipient only the services that the provider is certified to offer at that out-of-state location; at the request of the department, for each service that the provider will render to a recipient, the provider must verify the provider's qualifications and capacity to provide the specified services to that recipient; and

(D) must submit critical incident reports to the department in accordance with 7 AAC 130.224.

7 AAC 130.220(j)(2) is amended to read:

(2) the provider agency requests an exception in a format [ON A FORM] provided by the department.

7 AAC 130.220 is amended by adding new subsections to read:

(m) A provider certified to offer the following home and community-based waiver services shall render those services in a setting that is integrated into the greater community and

that allows the recipient to access that community to the same degree as an individual that does not receive home and community-based waiver services:

- (1) adult day services under 7 AAC 130.250;
 - (2) residential supported-living services under 7 AAC 130.255;
 - (3) day habilitation services under 7 AAC 130.260;
 - (4) residential habilitation services under 7 AAC 130.260(b) and (g);
 - (5) supported employment services under 7 AAC 130.270;
 - (6) transportation services under 7 AAC 130.290 provided as agency-based services;
 - (7) meal services under 7 AAC 130.295 provided in a congregate setting.
- (n) A provider shall render each service listed in (m) of this section in a setting that
- (1) was selected by the recipient from among settings options that include non-disability specific settings;
 - (2) ensures the rights of the recipient to privacy, dignity, and respect, and to freedom from coercion and restraint;
 - (3) optimizes the recipient's initiative, autonomy, and independence in making life choices, including those for daily activities, physical environment, and interactions with others;
 - (4) implements the recipient's choices regarding services and supports, and the individuals that will provide them;
 - (5) assists a recipient that chooses to
 - (A) seek employment and work in competitive, integrated settings; or

- (B) receive services in the community;
- (6) encourages and facilitates the recipient's engagement in community life; and
- (7) provides the opportunity for the recipient to control the recipient's personal resources.

(o) In addition to ensuring a setting meets the requirements specified in (n) of this section, a provider that owns or controls a residential setting

- (1) shall provide for the recipient
 - (A) a legally enforceable, written agreement that complies with the requirements of AS 34.03.010 - 34.03.380;
 - (B) the option of a private unit, if available in the setting and appropriate for the recipient's needs, preferences, and resources for payment of room and board; and
 - (C) a setting that is physically accessible for the recipient; and
- (2) except as provided under (p) of this section, shall provide for the recipient
 - (A) privacy in the recipient's living or sleeping unit;
 - (B) the freedom and support needed for a recipient to control the recipient's schedule and activities;
 - (C) access to food at all times; and
 - (D) visitors of the recipient's choosing at any time.

(p) A provider that owns or controls a residential setting may modify the setting requirements in (o)(2) of this section for a specific, assessed need of a recipient, only after the provider attempts positive interventions and other less intrusive methods of meeting the need, and these attempts prove unworkable. The modification must be approved in the plan of care

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developed in accordance with 7 AAC 130.217 and 7 AAC 130.218, and must be supported by a written record that includes

- (1) identification of the assessed need requiring modification;
 - (2) documentation, before any modification of the setting requirements, of positive interventions and other less intrusive methods that were used to address that need and that did not work;
 - (3) a description of the modification used; the modification must be directly proportional to the specific assessed need;
 - (4) an explanation of the method for collecting and reviewing data to measure the ongoing effectiveness of the modification;
 - (5) time limits for periodic reviews to determine if the modification continues to be necessary or should be terminated;
 - (6) documentation of the informed consent of the recipient for the modification;
- and
- (7) a documented analysis concluding the modification will not cause harm to the recipient.

(q) Unless otherwise approved by the department, a provider may not render home and community-based waiver services in a setting that is

- (1) in a building that is a publicly or privately operated facility that provides inpatient institutional treatment;
- (2) in a building on the grounds of, or immediately adjacent to, a public institution; or

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(3) in a location that isolates recipients from the broader community.

(r) A provider of home and community-based waiver services shall

(1) develop and implement written policies and procedures to ensure services are provided in accordance with 7 AAC 130.217, 7 AAC 130.218, and (m) - (q) of this section;

(2) train administrative staff and direct care workers to provide services as directed by those policies and procedures; and

(3) monitor and evaluate services to ensure compliance with settings requirements specified in this section. (Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am 7/1/2016, Register 218; am 11/5/2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.224(a) is amended to read:

(a) A provider shall report to the department, in a format [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.

7 AAC 130.224(b)(5) is amended to read:

(5) a process that ensures timely reporting of a critical incident to

(A) the department and the recipient's representative; and

(B) other service providers when necessary to protect the recipient's

health, safety, and welfare; the provider shall maintain a record of names of the providers that are sent incident reports and the date sent.

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(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

The introductory language of 7 AAC 130.227(b)(3) is amended to read:

(3) the recipient's plan of care developed in accordance with 7 AAC 130.217 **and**
7 AAC 130.218 specifies that the recipient needs

...

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.229(a) is repealed and readopted to read:

(a) A home and community-based waiver services provider may use restrictive
intervention as a response

(1) when a recipient's behavior is unanticipated and presents an imminent danger
to the recipient's safety or to the safety of others; or

(2) if justified for safe management of the recipient's behavior that requires
intervention as described in the plan of care developed in accordance with 7 AAC 130.217 and
7 AAC 130.218

(A) when other types of intervention have been tried and documented as
ineffective for behavior management; and

(B) if the type of intervention is safe, proportionate to the recipient's
behavior, and appropriate to the recipient's chronological and developmental age, size,

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gender, and physical, medical, and psychological condition.

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 /2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.231(a)(3) is amended to read:

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

(Eff. 7/1/2013, Register 206; am 11 / 5 /2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.235(b)(1) is amended to read:

(1) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 11 / 5 /2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.240(a)(2) is amended to read:

(2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care.

7 AAC 130.240(b)(1) is amended to read:

(1) one plan of care in any 365-day period, if the plan of care is accompanied by

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the form required under 7 AAC 130.219(b) [7 AAC 130.219(b)(1)] documenting the recipient's choice of home and community-based waiver services; the plan of care must be developed in accordance with 7 AAC 130.217 and 7 AAC 130.218, except that the department will pay for a plan of care that was developed based on the choice-of-service form required under 7 AAC 130.219(b) [7 AAC 130.219(b)(1)], but that the department cannot approve because home and community-based waiver services are not available under 7 AAC 130.205(b);

The introductory language of 7 AAC 130.240(c) is amended to read:

(c) The department will pay a care coordinator, beginning with the first month that the recipient is enrolled under 7 AAC 130.219 and has a plan of care approved under 7 AAC 130.217 and 7 AAC 130.218, for the following ongoing care coordination services provided in accordance with (b) of this section:

• • •

7 AAC 130.240(c)(4) is amended to read:

(4) reviewing and revising the plan of care under 7 AAC 130.217 and 7 AAC 130.218;

7 AAC 130.240(f) is amended to read:

(f) A care coordinator must disclose, to the department in a format [ON A FORM] provided by the department, any close familial relationship or close business relationship with a home and community-based waiver services provider.

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7 AAC 130.240(g) is amended to read:

(g) The department will not pay for care coordination services provided by the recipient, a member of the recipient's immediate family, the recipient's representative, an individual with a duty to support the recipient under state law, a holder of power of attorney for the recipient, or the recipient's personal care assistant.

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am

11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.245(a)(2) is amended to read:

(2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

7 AAC 130.245(c)(1) is amended to read:

(1) an individual that lives in the recipient's home is responsible for performing the chores described in (b) of this section, and the individual is a [AN ADULT] member of the recipient's immediate family, an individual with a duty to support the recipient under state law, or a caregiver for the recipient;

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am

11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

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7 AAC 130.250(a)(3) is amended to read:

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am

11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.255(a)(3) is amended to read:

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.260(a)(3) is amended to read:

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

The introductory language of 7 AAC 130.260(d) is amended to read:

(d) Notwithstanding (b)(1) of this section, the department will waive the requirement for provision of day habilitation services in a non-residential setting if the provider documents to the department's satisfaction, in a format [ON A FORM] provided by the department,

...

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(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 10/1/2017, Register 223; am

11/5/2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.265(a)(3) is amended to read:

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

7 AAC 130.265(b)(2)(B) is amended to read:

(B) is not a member of the recipient's immediate family, or an individual with a duty to support the recipient under state law; and

The introductory language of 7 AAC 130.265(c)(1) is amended to read:

(1) a recipient's care coordinator must demonstrate, to the department's satisfaction in the recipient's plan of care developed under 7 AAC 130.217 and 7 AAC 130.218, that the following criteria were evaluated to determine that a family home habilitation services site is appropriate to provide services to the recipient:

• • •

7 AAC 130.265(e)(1)(B) is amended to read:

(B) services provided by natural [FAMILY MEMBERS OR COMMUNITY] supports;

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The introductory language of 7 AAC 130.265(e)(2) is amended to read:

(2) the department will approve other direct care services for a recipient under (d) of this section, if the recipient's care coordinator confirms in writing and the department is satisfied that those services do not supplant or duplicate services provided by natural [FAMILY MEMBERS OR COMMUNITY] supports; for purposes of this paragraph, "direct care services" includes

...

7 AAC 130.265(e)(2)(D) is amended to read:

(D) meal services under 7 AAC 130.295. [;]

7 AAC 130.265(i)(1)(B) is amended to read:

(B) services provided by natural [FAMILY MEMBERS OR COMMUNITY] supports;

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am

11/5 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.267(b)(1) is amended to read:

(1) needs services that exceed those authorized in the recipient's current plan of care under 7 AAC 130.217 and 7 AAC 130.218; and

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The introductory language of 7 AAC 130.267(c) is amended to read:

(c) To request additional services under this section, the care coordinator responsible under 7 AAC 130.217 **and 7 AAC 130.218** for the recipient's plan of care must submit

...

7 AAC 130.267(c)(1)(C) is amended to read:

(C) indicates how additional services under this section would be consistent with services approved as part of the recipient's plan of care under 7 AAC 130.217 **and 7 AAC 130.218**; and

7 AAC 130.267(d)(1) is amended to read:

(1) a copy of the recipient's most recent medical evaluation conducted as part of an assessment under 7 AAC 130.213 specific to the recipient's plan of care under 7 AAC 130.217 **and 7 AAC 130.218**;

7 AAC 130.267(e)(1) is amended to read:

(1) most recent medical and psychological evaluations conducted as part of an assessment under 7 AAC 130.213 specific to the recipient's plan of care under 7 AAC 130.217 **and 7 AAC 130.218**; and

(Eff. 4/1/2012, Register 201; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11/5/2017, Register 224)

Authority: AS 47.05.010

AS 47.07.030

AS 47.07.040

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7 AAC 130.270(a)(4) is amended to read:

(4) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; if a recipient is under 22 years of age, the plan of care must document that the supported employment services do not duplicate or supplant educational services for which a recipient is eligible under 4 AAC 52; and

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am 10/1/2017, Register 223; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.275(a)(2) is amended to read:

(2) that are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

(Eff. 2/1/2010, Register 193; am 3/1/2011, Register 197; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.280(a)(2) is amended to read:

(2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

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7 AAC 130.285(a)(2) is amended to read:

(2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 11/5/2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.290(a)(2) is amended to read:

(2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care;

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am

11/5/2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.295(a)(3) is amended to read:

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 11/5/2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.300(a)(2) is amended to read:

(2) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

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(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am

11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.305(a)(3) is amended to read:

(3) is approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the recipient's plan of care; and

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

11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.319(8) is amended to read:

(8) "immediate family" means the spouse of the recipient, and the parent of a minor child that is the recipient [INCLUDES THE PARENTS OR MINOR SIBLINGS OF A RECIPIENT UNDER 18 YEARS OF AGE, AND THE SPOUSE OF A RECIPIENT];

(Eff. 2/1/2010, Register 193; am 11/3/2012, Register 204; am 7/1/2013, Register 206; am

7/1/2015, Register 214; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 160.900(d)(32) is amended to read:

(32) the *Adult Day Services Conditions of Participation*, dated September 5, 2017 [MAY 2, 2013];

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

(34) the *Care Coordination Services Conditions of Participation*, dated **September 5, 2017** [MARCH 4, 2015];

7 AAC 160.900(d)(35) is amended to read:

(35) the *Chore Services Conditions of Participation*, dated **September 5, 2017** [MAY 2, 2013];

7 AAC 160.900(d)(36) is amended to read:

(36) the *Day Habilitation Services Conditions of Participation*, dated **September 5, 2017** [MAY 2, 2013];

7 AAC 160.900(d)(42) is amended to read:

(36) the *Meal Services Conditions of Participation*, dated **September 5, 2017** [MAY 2, 2013];

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

(44) the **Home and Community-Based Waiver Services** *Provider Conditions of Participation*, dated **September 5, 2017** [MARCH 21, 2014];

7 AAC 160.900(d)(45) is amended to read:

(45) the *Residential Habilitation Services Conditions of Participation*, dated

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September 5, 2017 [MAY 2, 2013];

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

(46) the *Residential Supported-Living Services Conditions of Participation*, dated September 5, 2017 [MARCH 21, 2014];

7 AAC 160.900(d)(48) is amended to read:

(48) the *Respite Care Services Conditions of Participation*, dated September 5, 2017 [MAY 2, 2013];

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

(49) the *Supported Employment Services Conditions of Participation*, dated September 5, 2017 [MARCH 21, 2014];

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

(50) the *Transportation Services Conditions of Participation*, dated September 5, 2017 [MARCH 4, 2015];

7 AAC 160.900(d)(53) is amended to read:

(53) the *Environmental Modification Services Conditions of Participation*, dated September 5, 2017 [APRIL 4, 2014];

(Eff. 2/1/2010, Register 193; am 8/25/2010, Register 195; am 12/1/2010, Register 196; am

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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 5/1/2016, Register 218; am 6/16/2016, Register 218; am 7/22/2017, Register 223; am 11 / 5 / 2017, Register 224)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.012

In the editor's note following 7 AAC 160.900, the 41st paragraph is changed to read:

The Application for Alaskans Living Independently Waiver and Adults with Physical and Developmental Disabilities Waiver, Adult Day Services Condition of Participation, Care Coordinator Certification Application, Care Coordination Services Conditions of Participation, Chore Services Conditions of Participation, Day Habilitation Services Conditions of Participation, Intellectual & Developmental Disabilities Registration and Review form, Material Improvement Reporting for ALI/APDD Waivers, Material Improvement Reporting for CCMC Waivers, Material Improvement Reporting for IDD Participants Age Three or Over, Material Improvement Reporting for IDD Participants Under the Age of Three, Home and Community-

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*Based Waiver Services Provider Certification Application, Meal Services Conditions of Participation, Nursing Facility Level of Care Assessment Form for Children, **Home and Community-Based Waiver Services** Provider Conditions of Participation, Residential Habilitation Services Conditions of Participation, Residential Supported-Living Services Conditions of Participation, Screening Tool for Children with Complex Medical Conditions (CCMC) Waiver Program, Supported Employment Services Conditions of Participation, Transportation Services Conditions of Participation, and Environmental Modification Services Conditions of Participation, adopted by reference in 7 AAC 160.900(d), may be obtained by contacting the Department of Health and Social Services, Division of Senior and Disabilities Services, P.O. Box 110680, Juneau, Alaska, 99811-0680 and are posted on the Department of Health and Social Services, Division of Senior and Disabilities Services Internet website at <http://dhss.alaska.gov/dsds>*

MEMORANDUM


State of Alaska
Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: October 3, 2017

File No.: JU2017200102

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: Medicaid
coverage and payment, home and
community-based waiver services, and
person-centered services and settings
(7 AAC 130; 7 AAC 160.900(d))

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 October 3, 2017 from the Regulations Attorney. The regulations update Medicaid coverage and payment regulations, particularly regarding home and community-based waiver services and the use of a person-centered approach, especially in the development of a recipient's plan of care, for services and settings.

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.

We note that as part of amendments to 7 AAC 130.202--formerly set out as a standalone section, without breakout into subsections or smaller subdivisions--the department adds a new 7 AAC 130.202(b). Regarding text that is not assigned to 7 AAC 130.202(b), please ask the publisher to insert an "(a)" subsection tag.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2017200102

October 3, 2017
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The April 20, 2017 public notice and the October 2, 2017 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

Duane Mayes, Director
Division of Senior and Disabilities Services
Department of Health and Social Services

Jetta Whittaker
Division of Senior and Disabilities Services
Department of Health and Social Services

Elizabeth J. Smith, Assistant Attorney General
Human Services Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: October 3, 2017

FILE NO.: JU2017200102

TELEPHONE NO.: (907) 465-3600

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

SUBJECT: Specific delegation of authority
regarding regulations review on
Department of Health and Social
Services regulations re: Medicaid
coverage and payment, home and
community-based waiver
services, and person-centered
services and settings (7 AAC 130;
7 AAC 160.900(d))

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

NOTICE OF PROPOSED CHANGES ON MEDICAID: HOME & COMMUNITY-BASED WAIVER SERVICES; PERSON-CENTERED SETTINGS & AMENDMENTS IN THE REGULATIONS OF DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on Medicaid home and community-based waiver services, person-centered practices, and settings requirements.

The Department of Health and Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with Medicaid home and community-based waiver services, person-centered practices and settings requirements, including the following:

- 7 AAC 130.200. Purpose - is proposed to be amended to include references to person-centered practices that support access to the full benefits of community living.
- 7 AAC 130.202. Services provided by family members – is proposed to be amended to describe family members and others that cannot provide Medicaid home and community-based waiver services.
- 7 AAC 130.205. Eligibility for home and community-based waiver services – is proposed to be amended to clarify when home and community-based waiver services are not available to an individual.
- 7 AAC 130.211. Screening – is proposed to be amended to clarify the steps that constitute the application for home and community-based waiver services.
- 7 AAC 130.213. Assessment and reassessment - is proposed to be amended to change when and how assessments and reassessments are conducted.
- 7 AAC 130.217. Plan of care development and amendment – is proposed to be repealed and readopted to include person-centered practices in the plan of care development process.
- 7 AAC 130.219. Enrollment in home and community-based waiver services; disenrollment – is proposed to be amended to clarify the requirements for enrollment for home and community-based waiver services.
- 7 AAC 130.220. Provider certification – is proposed to be amended to include the requirements for settings compliance at provider certification.
- 7 AAC 130.224. Critical incident reporting - is proposed to be amended to add notification of the recipient's representative and other service providers when a critical incident is reported.
- 7 AAC 130.229. Use of restrictive interventions – is proposed to be amended to clarify that the use of restrictive interventions must be described in a recipient's plan of care.

- 7 AAC 130.240. Care coordination services – is proposed to be amended to expand the types of individuals that the department will not pay for care coordination services.
- 7 AAC 130.245. Chore services – is proposed to be amended to expand the types of individuals that the department will not pay for chore services.
- 7 AAC 130.260. Day habilitation services – is proposed to be amended to change how documentation is provided to the department.
- 7 AAC 130.265. Residential habilitation services – is proposed to be amended to modify who is not considered to be a primary caregiver for the service of family home habilitation, and to modify the limitations under which the department will pay for supported-living and in-home support habilitation.
- 7 AAC 130.275. Intensive active treatment services – is proposed to be amended to remove children up to age 21 from those who can be approved to receive the service.
- 7 AAC 130.319. Definitions - is proposed to be amended to modify the definition of immediate family.
- 7 AAC 130 is proposed to be amended to add a new section, titled "Person-centered practice," that defines the goals and procedures for implementing person-centered plans of care.
- 7 AAC 160.900 Definitions – is proposed to be amended to update the Conditions of Participation for twelve home and community-based waiver services.

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 Jetta Whittaker at jetta.whittaker@alaska.gov or PO Box 110680, Attn. Jetta Whittaker, Juneau AK 99811-0680. The comments must be received not later than 5 p.m. on June 5, 2017.

You may submit written questions relevant to the proposed action to Jetta Whittaker at jetta.whittaker@alaska.gov or at 240 Main St., Juneau, AK 99801. 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 responses available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/> and agency website at <http://dhss.alaska.gov/dsds/Pages/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jetta Whittaker at jetta.whittaker@alaska.gov or at (907) 465-1605 not later than May 22, 2017, 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 Jetta Whittaker at jetta.whittaker@alaska.gov or at (907) 465-1605.

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 regulation may be different from that of the proposed

regulation. **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 47.07.045.

Statutes being implemented, interpreted, or made specific: AS 47.05.010; AS 47.05.012; AS 47.07.030; AS 47.07.040; AS 47.07.045.

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

DATE: 4-17-17


Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

NOTICE OF PROPOSED CHANGES ON MEDICAID: HOME & COMMUNITY-BASED WAIVER SERVICES; PERSON-CENTERED SETTINGS & AMENDMENTS IN THE REGULATIONS OF DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health and Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with Medicaid home and community-based waiver services, person-centered practices and settings requirements, including the following:

- 7 AAC 130.200. Purpose - is proposed to be amended to include references to person-centered practices that support access to the full benefits of community living.
- 7 AAC 130.202. Services provided by family members – is proposed to be amended to describe family members and others that cannot provide Medicaid home and community-based waiver services.
- 7 AAC 130.205. Eligibility for home and community-based waiver services – is proposed to be amended to clarify when home and community-based waiver services are not available to an individual.
- 7 AAC 130.211. Screening – is proposed to be amended to clarify the steps that constitute the application for home and community-based waiver services.
- 7 AAC 130.213. Assessment and reassessment - is proposed to be amended to change when and how assessments and reassessments are conducted.
- 7 AAC 130.217. Plan of care development and amendment – is proposed to be repealed and readopted to include person-centered practices in the plan of care development process.
- 7 AAC 130.219. Enrollment in home and community-based waiver services; disenrollment – is proposed to be amended to clarify the requirements for enrollment for home and community-based waiver services.
- 7 AAC 130.220. Provider certification – is proposed to be amended to include the requirements for settings compliance at provider certification.
- 7 AAC 130.224. Critical incident reporting - is proposed to be amended to add notification of the recipient's representative and other service providers when a critical incident is reported.
- 7 AAC 130.229. Use of restrictive interventions – is proposed to be amended to clarify that the use of restrictive interventions must be described in a recipient's plan of care.
- 7 AAC 130.240. Care coordination services – is proposed to be amended to expand the types of individuals that the department will not pay for care coordination services.
- 7 AAC 130.245. Chore services – is proposed to be amended to expand the types of individuals that the department will not pay for chore services.
- 7 AAC 130.260. Day habilitation services – is proposed to be amended to change how documentation

is provided to the department.

- 7 AAC 130.265. Residential habilitation services – is proposed to be amended to modify who is not considered to be a primary caregiver for the service of family home habilitation, and to modify the limitations under which the department will pay for supported-living and in-home support habilitation.
- 7 AAC 130.275. Intensive active treatment services – is proposed to be amended to remove children up to age 21 from those who can be approved to receive the service.
- 7 AAC 130.319. Definitions - is proposed to be amended to modify the definition of immediate family.
- 7 AAC 130 is proposed to be amended to add a new section, titled "Person-centered practice," that defines the goals and procedures for implementing person-centered plans of care.
- 7 AAC 160.900 Definitions – is proposed to be amended to update the Conditions of Participation for twelve home and community-based waiver services.

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 Jetta Whittaker at jetta.whittaker@alaska.gov or PO Box 110680, Attn. Jetta Whittaker, Juneau AK 99811-0680. The comments must be received not later than 5 p.m. on June 5, 2017.

You may submit written questions relevant to the proposed action to Jetta Whittaker at jetta.whittaker@alaska.gov or at 240 Main St., Juneau, AK 99801. 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 responses available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/> and agency website at <http://dhss.alaska.gov/dsds/Pages/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jetta Whittaker at jetta.whittaker@alaska.gov or at (907) 465-1605 not later than May 22, 2017, 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 Jetta Whittaker at jetta.whittaker@alaska.gov or at (907) 465-1605.

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 regulation may be different from that of the proposed regulation. **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 47.07.045.

Statutes being implemented, interpreted, or made specific: AS 47.05.010; AS 47.05.012; AS 47.07.030; AS 47.07.040; AS 47.07.045.

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

DATE: 4-17-17


Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

(AS 44.62.190(d))¹

5. Reason for the proposed action:

() Compliance with new or changed state statute

() Development of program standards

() Other (identify): _____

7. Estimated annual cost to comply with the proposed action to:

Another state agency: \$0

A municipality: \$0

- | | Initial Year
FY <u>2018</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) | \$ <u>0</u> | \$ <u>0</u> |

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

Name: Jetta Whittaker
Title: Manager, SDS Policy Unit
Address: PO Box 110680 Juneau AK 99811-0680
Telephone: (907)465-1605
E-mail address: jetta.whittaker@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: 3/17/17 Prepared by: Jetta Whittaker
[signature]

Name (printed): Jetta Whittaker
Title (printed): Manager, SDS Policy Unit
Telephone: (907) 465-1605

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:

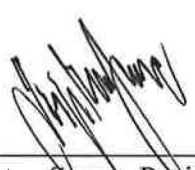
As required by AS 44.62.190, notice of the proposed adoption of changes to 7 AAC 130 & 160, and dealing with Medicaid, Home & Community-Based Waiver Services, Person-Centered & Settings Amendments, has been given by being

- (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:

July 20, 2017.



Triptaa Surve, Project Coordinator

Subscribed and sworn to before me at DHSS Office of the Commissioner on

7 - 20 - 17

(date)



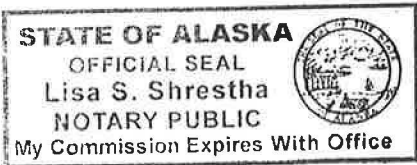
Kristina Serezhchenko
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Jetta Whittaker, Manager of the Policy and Program Development Unit for the Division of Senior and Disabilities Services of the Department of Health and Social Services, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Health and Social Services has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Health and Social Services regulation on settings and person-centered aspects of Medicaid Home and Community-based Waiver Services.

Date: 7/14/17



Jetta Whittaker
Jetta Whittaker
Manager, Policy and Program Development Unit

Subscribed and sworn to before me at
July 14, 2017.
(date)

July 12 Juneau on

Lisa S. Shrestha
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

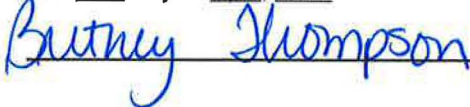
April 21, 2017

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 21st day of April, 2017



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

2/23/2019

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

NOTICE OF PROPOSED CHANGES ON MEDICAID: HOME & COMMUNITY-BASED WAIVER SERVICES; PERSON-CENTERED SETTINGS & AMENDMENTS & GENERAL PROVISIONS IN THE REGULATIONS OF DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health and Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with Medicaid home and community-based waiver services, person-centered practices and settings requirements, including the following:

- 7 AAC 130.200. Purpose - is proposed to be amended to include references to person-centered practices that support access to the full benefits of community living.
- 7 AAC 130.202. Services provided by family members - is proposed to be amended to describe family members and others that cannot provide Medicaid home and community-based waiver services.
- 7 AAC 130.205. Eligibility for home and community-based waiver services - is proposed to be amended to clarify when home and community-based waiver services are not available to an individual.
- 7 AAC 130.211. Screening - is proposed to be amended to clarify the steps that constitute the application for home and community-based waiver services.
- 7 AAC 130.213. Assessment and reassessment - is proposed to be amended to change when and how assessments and reassessments are conducted.
- 7 AAC 130.217. Plan of care development and amendment - is proposed to be repealed and readopted to include person-centered practices in the plan of care development process.
- 7 AAC 130.219. Enrollment in home and community-based waiver services; disenrollment - is proposed to be amended to clarify the requirements for enrollment for home and community-based waiver services.
- 7 AAC 130.220. Provider certification - is proposed to be amended to include the requirements for settings compliance at provider certification.
- 7 AAC 130.224. Critical incident reporting - is proposed to be amended to add notification of the recipient's representative and other service providers when a critical incident is reported.
- 7 AAC 130.229. Use of restrictive interventions - is proposed to be amended to clarify that the use of restrictive interventions must be described in a recipient's plan of care.
- 7 AAC 130.240. Care coordination services - is proposed to be amended to expand the types of individuals that the department will not pay for care coordination services.

• 7 AAC 130.245. Chore services - is proposed to be amended to expand the types of individuals that the department will not pay for chore services.

• 7 AAC 130.260. Day habilitation services - is proposed to be amended to change how documentation is provided.

• 7 AAC 130.265. Residential habilitation services - is proposed to be amended to modify who is not considered eligible for the service of family home habilitation under which the department will not pay for support habilitation.

• 7 AAC 130.275. Intensive act services - is proposed to be amended to remove children who are not approved to receive the service.

• 7 AAC 130.319. Definition of immediate family - is proposed to be amended to change the definition of immediate family.

• 7 AAC 130.320. Person-centered practices - is proposed to be amended to change the definition of person-centered practices.

• 7 AAC 160.900. Conditions of payment for waiver services - is proposed to be amended to change the conditions of payment for waiver services.

You may contact the Department of Health and Social Services for more information. A copy of the proposed regulations will be available for public review at the Department of Health and Social Services, 1115 W. 11th Ave., Anchorage, Alaska 99515, from 9 a.m. to 5 p.m.

You may also contact the Department of Health and Social Services for more information. A copy of the proposed regulations will be available for public review at the Department of Health and Social Services, 1115 W. 11th Ave., Anchorage, Alaska 99515, from 9 a.m. to 5 p.m.

Published: April 20, 2017
DATE: April 17, 2017
Fiscal Information: The Department of Health and Social Services is expected to require an increased rate for the implementation of the proposed regulations. AS 47.05.010, AS 47.05.012, AS 47.05.015, AS 47.05.040, AS 47.05.045, AS 47.05.070, AS 47.05.072, AS 47.05.075, AS 47.05.080, AS 47.05.085, AS 47.05.090, AS 47.05.095, AS 47.05.100, AS 47.05.105, AS 47.05.110, AS 47.05.115, AS 47.05.120, AS 47.05.125, AS 47.05.130, AS 47.05.135, AS 47.05.140, AS 47.05.145, AS 47.05.150, AS 47.05.155, AS 47.05.160, AS 47.05.165, AS 47.05.170, AS 47.05.175, AS 47.05.180, AS 47.05.185, AS 47.05.190, AS 47.05.195, AS 47.05.200, AS 47.05.205, AS 47.05.210, AS 47.05.215, AS 47.05.220, AS 47.05.225, AS 47.05.230, AS 47.05.235, AS 47.05.240, AS 47.05.245, AS 47.05.250, AS 47.05.255, AS 47.05.260, AS 47.05.265, AS 47.05.270, AS 47.05.275, AS 47.05.280, AS 47.05.285, AS 47.05.290, AS 47.05.295, AS 47.05.300, AS 47.05.305, AS 47.05.310, AS 47.05.315, AS 47.05.320, AS 47.05.325, AS 47.05.330, AS 47.05.335, AS 47.05.340, AS 47.05.345, AS 47.05.350, AS 47.05.355, AS 47.05.360, AS 47.05.365, AS 47.05.370, AS 47.05.375, AS 47.05.380, AS 47.05.385, AS 47.05.390, AS 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