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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Triptaa Surve
Department of Health and Social Services

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: July 1, 2019

RE: Filed Emergency Regulations: Department of Health and Social Services

Department of Health and Social Services Emergency Regulations re: Prospective
Payment System and Cost Containment (7 AAC 150; 160; 190)

Attorney General File:	Emergency Regulations
Regulation Filed:	7/1/2019
Effective Date:	7/1/2019
Expiration Date:	October 28, 2019 unless made permanent by the adopting agency
Print:	231, October 2019

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

FINDING OF EMERGENCY

The Department of Health and Social Services finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

The commissioner of health and social services finds that the costs of medical assistance for all persons eligible under Alaska Statute (AS) 47.07 will exceed the amount allocated in the state budget for fiscal year 2020. The Medicaid program, one of the largest components in the state budget, will be significantly underfunded in fiscal year 2020. While the Medicaid program anticipates reducing some of its expenditures through reform and other action, it cannot absorb the full general fund reduction and maintain Medicaid services at current levels.

As a result, the Medicaid program faces a fiscal reality that requires the immediate adoption of emergency regulations to preserve the health and general welfare of thousands of Medicaid recipients. The Medicaid program and participating providers ensure that services are available and delivered to over 215,000 Alaskans. If the Medicaid program simply stops providing services to its recipients due to a budget shortfall, or if providers stop participating in the Medicaid program due to uncertainty in reimbursement for services by the department, there will be an immediate danger to the health and general welfare of these recipients. Implementing emergency regulations at this time will help preserve services and eligibility while providing certainty to all participants and providers about reimbursement for services.

Furthermore, both optional and mandatory Medicaid services are critical to recipients' health and general welfare. If optional services were to cease in less than 30 days, Alaskans who receive Medicaid services would be denied access to critical medications and supports, including wheelchairs and prosthetics. Alaskans who receive Medicaid personal care attendant services would be stranded at home with no ability to complete basic activities of daily living. Alaskans with developmental disabilities would be denied essential care that is currently provided under Medicaid waivers. Finally, younger Alaskans with psychiatric issues would be denied inpatient psychiatric care that would otherwise be covered under Medicaid.

If the costs of medical assistance for all persons eligible under AS 47.07 exceed the amount allocated in the state budget for a fiscal year, the Department of Health and Social Services may implement under AS 47.07.036 cost containment measures to reduce anticipated program costs. The purpose of implementing cost containment measures under AS 47.07.036 is to take all reasonable steps to avoid eliminating program eligibility and services. If the department adopts cost containment measures by emergency regulations, it will avoid the fiscal emergency, immediately preserve the health and general welfare of Medicaid recipients, and ensure the state's compliance with federal and state law by maintaining existing Medicaid services.

The emergency regulations implement a freeze to inflation adjustments for Medicaid payments rates that would otherwise be increased for inflation in fiscal year 2020 and a five percent (5%) rate reduction to Medicaid hospital inpatient, hospital outpatient and ambulatory surgical centers Medicaid payment rates, except for the inpatient and outpatient rates for facilities licensed as a Critical Access Hospital (CAH). Emergency regulations are required because several Medicaid payment rates are set to increase for inflation on July 1, 2019, and there is significant uncertainty from participating providers on whether Medicaid payment rates will be reduced in fiscal year 2020.

Accordingly, given the immediate danger to the health and general welfare of the state's Medicaid recipients, the commissioner of health and social services directs the department to implement cost containment measures to reduce program costs for fiscal year 2020 as authorized under AS 47.07.036. Additionally, the commissioner finds that the cost containment measures implemented in the attached emergency regulations are the most reasonable steps to contain costs in a way that will not eliminate program eligibility or the scope of services required or authorized under AS 47.07.020 and 47.07.030.


ADOPTION ORDER

Under the authority of AS 47.05.010, AS 47.07.070, AS 47.07.071, and AS 47.07.073, the attached 3 pages of regulation changes are therefore adopted as an emergency regulation to take effect on July 1, 2019, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE:

6/28/19


Adam Crum
Commissioner,
Department of Health & Social Services

FILING CERTIFICATION

April Simpson for

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on July 1, 2019, at 2:20 pm., I filed the attached regulation according to the provisions of AS 44.62.

April Simpson for
Lieutenant Governor Kevin Meyer

Effective:

July 1, 2019

Register:

231, October 2019.

Expires October 28, 2019
unless made "permanent"
by the adopting agency.

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



K-Meyer
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**KEVIN MEYER
LIEUTENANT GOVERNOR**

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Notes to reader:

1. Except as discussed in note 2, new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line above the text of each section of the regulations states that a new section, subsection, paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”
5. Only the text that is being changed within a section of the current regulations is included in this draft. Refer to the text of that whole section, published in the current Alaska Administrative Code, to determine how a proposed change relates within the context of the whole section and the whole chapter.

Title 7 Health and Social Services.

Chapter 150. Prospective Payment System; Other Payment.

7 AAC 150.150. Adjustment factors.

7 AAC 150.150 is amended by adding a new subsection to read:

(h) For state fiscal year 2020, the department will not adjust for inflation, the noncapital or capital components of the payment rate. A facility licensed as a Critical Access Hospital (CAH) through the State of Alaska, Division of Health Care Services, *Health Facilities Licensing Certification List*, revised February 28, 2019, will be exempt from this provision. (Eff. 2/1/2010, Register 193; am 10/1/2017, Register 223; am 7 / 1 / 2019 Register 231)

Authority: AS 47.05.010 AS 47.07.071 AS 47.07.073
AS 47.07.070

7 AAC 150.160. Methodology and criteria for approval or modification of a payment rate.

7 AAC 150.160(b) is amended by adding a new paragraph to read:

(b) The department will express the inpatient hospital payment rate for general acute care, specialty, and inpatient psychiatric hospitals as a per-day rate. The per-day inpatient hospital

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payment rate will be based on allowable costs calculated from the appropriate base year adjusted Medicare cost report as follows:

...

(11) in state fiscal year 2020, the payment rate will be set at 95 percent of the rate calculated in (1) – (9) of this subsection; a facility licensed as a Critical Access Hospital (CAH) through the State of Alaska, Division of Health Care Services, Health Facilities Licensing Certification List, revised February 28, 2019, will be exempt from this provision and will be reimbursed at 100 percent of the rate calculated in (1) – (9) of this subsection.

7 AAC 150.160(c) is amended by adding a new paragraph to read:

(c) The department will express outpatient general acute care hospital payment rates as a percentage of charges calculated as follows:

...

(8) in state fiscal year 2020, the payment rate will be set at 95 percent of the rate calculated in (1) – (6) of this subsection; a facility licensed as a Critical Access Hospital (CAH) through the State of Alaska, Division of Health Care Services, Health Facilities Licensing Certification List, revised February 28, 2019, will be exempt from this provision and will be reimbursed at 100 percent of the rate calculated in (1) – (6) of this subsection.

7 AAC 150.160(h) is amended to read:

(h) The department will determine a rate of payment for ambulatory surgical centers based on the federal Medicare ambulatory surgical center payment rates for federal fiscal year

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2000, adopted by reference in 7 AAC 160.900, and as adjusted annually by the adjustment factors in 7 AAC 150.150. In state fiscal year 2020 [2018], the payment rate is 95 percent of the rate calculated in this subsection.

(Eff. 2/1/2010, Register 193; am 10/1/2017, Register 223; am 11/10/2018, Register 228;

am 7 / 1 / 2019 Register 231)

Authority: AS 47.05.010 AS 47.07.070

7 AAC 150.190. Optional payment rate methodology and criteria for small facilities.

7 AAC 150.190(g)(3) is amended to read:

(1) a first year payment rate for long-term care will be expressed as a per-day rate as calculated in 7 AAC 150.160(e); for each complete fiscal year of the small facility that begins during the period after the first payment year of the rate agreement made under (d) of this section and that ends at the expiration of the rate agreement, the first year payment rate will be increased by updating the noncapital portion of the payment rate annually at the rate of three percent per year and by updating the capital portion of the payment rate annually at the rate of 1.1 percent per year; for state fiscal year 2020 [2018], the **inflation referenced in this paragraph will not be applied** [DEPARTMENT WILL NOT APPLY THE RATE INCREASES DESCRIBED IN THIS PARAGRAPH];

(Eff. 2/1/2010, Register 193; am 10/1/2017, Register 223; am 7 / 1 / 2019, Register 231)

Authority: AS 47.05.010 AS 47.07.071 AS 47.07.073

AS 47.07.070

DEPARTMENT OF HEALTH & SOCIAL SERVICES



EMERGENCY REGULATIONS PROPOSED CHANGES TO REGULATIONS

7 AAC 150. Prospective Payment System; Other Payment.

- 7 AAC 150. *Adjustment factors.*
- 7 AAC 160. *Methodology and criteria for approval or modification of a payment rate.*
- 7 AAC 190. *Optional payment rate methodology and criteria for small facilities.*



PUBLIC REVIEW DRAFT
June 12, 2019

COMMENT PERIOD ENDS: August 8, 2019

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



THE STATE
of **ALASKA**
GOVERNOR MICHAEL I. DUNLEAVY

**Department of
Health and Social Services**

OFFICE OF THE COMMISSIONER

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TO: April Simpson
Regulations & Initiatives Coordinator
Office of the Lieutenant Governor
State of Alaska

DATE: June 28, 2019

FILE NO.: 2019200430

TEL. NO.: (907) 269-7870

FROM: Triptaa Surve, Regulations Contact
Department of Health & Social Services

SUBJECT: Request for filing EMERGENCY
REGULATIONS on the
*Prospective Payment System (7
AAC 150, .160, .190)*

We request that you file the EMERGENCY REGULATIONS, *Prospective Payment System (7 AAC 150, .160, .190)*.

Attached:

- Emergency regulation.
- Finding of Emergency/Adoption Order.

Please contact me if you have any questions about this request.

Thank you.