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**OFFICE OF THE LIEUTENANT GOVERNOR
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MEMORANDUM

TO: Triptaa Surve
Department of Health and Social Services

FROM: April Simpson, Office of the Lieutenant Governor
465.4081 

DATE: October 11, 2019

RE: Filed Permanent Regulations: Department of Health and Social Services
Department of Health and Social Services Regulation re: Div. of Behavioral Health:
Behavioral; 1115 Waiver (7 AAC 136, 138)

Attorney General File:	2019200445
Regulation Filed:	10/11/2019
Effective Date:	7/1/2019 (Emergency regulations being made permanent) and 11/10/2019
Print:	232, January 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

CERTIFICATION OF COMPLIANCE

I, Adam Crum, Commissioner, certify that, as required by AS 44.62.260 in order to make the attached 19 pages of regulations permanent, as of this date a legal opinion of the Department of Law has been requested under AS 44.62.060, a notice conforming to AS 44.62.200 was issued in compliance with AS 44.62.190, and an opportunity for public comment was provided under AS 44.62.210, for the following emergency regulation:

7 AAC 136, 138. Medicaid Coverage & Payment, Behavioral Health Services; 1115 Waiver Services; Substance Use Disorder Waiver Services.

This regulation originally was filed as an emergency regulation on July 1, 2019.

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

Date: November 7, 2019.


Adam Crum
Commissioner, Department of Health & Social Services

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on October 11, 2019, at 8:50 Am., I filed the attached regulation according to the provisions of AS 44.62.


Lieutenant Governor

Register: 232, January 2020.

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

The attached 19 pages of regulations, dealing with Medicaid Coverage & Payment, Behavioral Health Services; 1115 Waiver Services; Substance Use Disorder Waiver Services 7 AAC 136, and 7 AAC 138, are adopted and certified to be a correct copy of the regulation changes that the Department of Health and Social Services adopts under the authority of AS 47.05.010, AS 47.07.030, 47.07.040 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 paid special attention to the cost to private persons of the regulatory action being taken.

The regulations were first amended as emergency regulations effective July 1, 2019. These changes make permanent, with amendments, those regulations and 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: October 3, 2019.



Adam Crum
Commissioner, Department of Health & Social Services

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on October 11, 2019, at 8:51 A.m., I filed the attached regulation according to the provisions of AS 44.62.



Lieutenant Governor

Register: 232, January 2020.

The emergency amendment of 7 AAC adding a new chapter is made permanent to read:

**7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115
Demonstration Waiver.**

Article

1. Administration (7AAC 136.010 – 7 AAC 136.050)

Article 1. Administration.

Section

010. **Purpose** [DEPARTMENT RESPONSIBILITIES].

020. Provider requirements.

The emergency amendment of 7 AAC 136.010 is made permanent to read:

7 AAC 136.010. Purpose [DEPARTMENT RESPONSIBILITIES]. The purpose of this chapter is to offer individuals who meet the eligibility criteria of this chapter services offered by the Substance Use Disorder Treatment and Alaska Behavioral Health Program under the 1115 waiver approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). To meet the purpose of this chapter, the department will

- (1) establish recipient eligibility;
- (2) establish department approval criteria for providers of 1115 waiver services;
- (3) ensure that all 1115 waiver services are provided according to the **Special**

Terms and Conditions for Section 1115 (a) Demonstration: Alaska Substance Use Disorder and Behavioral Health Program [REQUIREMENTS EXPRESSED IN THE SPECIAL TERMS AND CONDITIONS], adopted by reference in 7 AAC 160.900, and according to service criteria established under 7 AAC 138;

(4) establish service standards and administrative procedures for providers of 1115 waiver services;

(5) conduct utilization reviews of the 1115 waiver project and 1115 waiver services;

(6) collect and report data to Centers for Medicare and Medicaid Services (CMS) for project monitoring and evaluation; and

(7) establish definitions and service criteria for 1115 waiver services; in this

section "1115 waiver" has the meaning given in 7 AAC 160.990.

Not

(Eff. 7/1/2019, Register 231)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: 7 AAC 136.010 was effective as an emergency regulation July 1, 2019. In reviewing the permanent amendment in accordance with AS 44.62.060 and 44.62.125, the regulations attorney made technical corrections to the emergency regulation made permanent. The technical changes appear in 7 AAC 136.010 as published in Register 232.

The emergency amendment of 7 AAC 136.020 is made permanent to read:

7 AAC 136.020. Provider requirements. In addition to the requirements of 7 AAC 70, 7 AAC 105, and 7 AAC 135, to qualify as a provider of 1115 waiver services a provider must

(1) obtain department certification as ^{*7 AAC*} a [AN] 1115 waiver services provider before delivering 1115 waiver services if the provider is a community behavioral health services provider;

(2) collaborate with the department or its contractor to

(A) establish recipient eligibility and coordinate recipient care and benefit management;

(B) report data required by the department; and

(C) participate in quality management, improvement, and assurance process; and

(3) comply with the additional requirements listed in the *Alaska Behavioral Health Providers Service Standards and Administrative Procedures*, adopted by reference in 7 AAC 160.900, including the documentation guidelines for 1115 waiver services outlined in that material. (Eff. 7/1/2019, Register 231)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: 7 AAC 136.020 was effective as an emergency regulation July 1, 2019. In reviewing the permanent amendment in accordance with AS 44.62.060 and 44.62.125, the regulations attorney made technical corrections to the emergency regulation made permanent. The technical changes appear in 7 AAC 136.020 as published in Register 232.

The emergency amendment of 7 AAC adding a new chapter is made permanent to read:

7 AAC 138. 1115 Substance Use Disorder Waiver Services.

Article

1. Scope; Eligibility; Service Provision, Rates and Authorization. (7AAC 138.010 – 7 AAC 138.040)[.]

2. Medicaid 1115 Substance Use Disorder Waiver Services. (7AAC 138.100 – 7 AAC 138.400)[.]

3. General Provisions. (7AAC 138.900 – 7 AAC 138.990)[.]

Article 1. Scope; Eligibility; Service Provision, Rates, and Authorization.

Section

010. Recipient eligibility.

020. Provision of 1115 substance use disorder waiver services.

030. Provision of Medicaid state plan services.

040. Service rates, service limits, and service authorization.

The emergency amendment of 7 AAC 138.010 is made permanent and that section is further amended to read:

7 AAC 138.010. Recipient eligibility. The following Medicaid-eligible recipients may receive services under this chapter:

(1) a child [AGE] at least¹² years of age and under 18 years of age
[through 17 years] ^{U.C.} who may have a substance use disorder ^{or} or may be at risk to develop a
substance use disorder as determined through a screening conducted according to 7 AAC
135.100 [AN SUD];

(2) a youth [AGE] at least 18 years of age and under 22 years of age
[through 21 years] ^{U.C.} who may have a substance use disorder or may be at risk to develop a
substance use disorder [AN SUD]; ^{as determined through a screening conducted according to 7 AAC 135.100} ^{Bold/u.e.}

(3) an adult who is diagnosed with a substance use disorder [AN SUD] or
is at risk of developing a substance use disorder as determined through a screening
conducted according to 7 AAC 135.100. (Eff. 7/1/2019, Register 231; am 11 / 10 / 2019, Register

232)

Authority: AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.020 is made permanent and that section is further amended to read:


7 AAC 138.020. Provision of 1115 substance use disorder waiver services. The department will pay for **substance use disorder**[SUD] 1115 waiver services if the

- (1) recipient is eligible under 7 AAC 138.010;
- (2) provider meets the requirements in 7 AAC 136.020;
- (3) ~~repealed 11/10/2019~~; [PROVIDER MEETS THE ADDITIONAL

REQUIREMENTS FOR THE ASAM LEVEL OF CARE CERTIFICATION PROVIDED BY THE COMMISSION ON ACCREDITATION OF REHABILITATION FACILITIES IF PROVIDING INPATIENT SUD 1115 WAIVER SERVICES;]

(4) provider meets, in addition to the requirements of this chapter, the [ADDITIONAL] requirements in 7 AAC 70.125 if providing opioid use disorder treatment services;

(5) provider provides a recipient **substance use disorder** [SUD] 1115 waiver services listed in 7 AAC 138.250 – 7 AAC 138.400 based on an assessment under 7 AAC 135.110 and according to the assessment criteria outlined in the *ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, adopted by reference in 7 AAC 70.910, and that results in a diagnosis according to the

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

(B) *International Classification of Diseases*, adopted by reference in 7 AAC 70.910; and

(6) substance use disorder[SUD] 1115 waiver services listed in 7 AAC 138.250 – 7 AAC 138.350 are provided according to the treatment criteria listed in the *ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions*, adopted by reference in 7 AAC 70.910. (Eff. 7/1/2019, Register 231; am 11 / 10 / 2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.030 is made permanent and that section is further amended to read:

7 AAC 138.030. Provision of Medicaid state plan services. (a) Except as provided in (b) of this section, the department will pay for a behavioral health Medicaid state plan service provided to an eligible recipient even if the recipient is also receiving services under this chapter.

(b) A provider may only provide a behavioral health rehabilitation service listed in 7 AAC 135.010(c) concurrently with [MAY ONLY BE PROVIDED TO A RECIPIENT THAT CONCURRENTLY RECEIVES] services under this chapter if the provider first obtains [A PRIOR] authorization from the department for a [THAT] service listed in 7 AAC 135.010(c). (Eff. 7/1/2019, Register 231); am 11 / 10 / 2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030

Editor’s note: 7 AAC 138.030 was effective as an emergency regulation July 1, 2019. In reviewing the permanent amendments in accordance with AS 44.62.060 and 44.62.125, the regulations attorney made technical corrections to the emergency regulation made permanent. The technical changes appear in 7 AAC 138.030 as published in Register 232.

The emergency amendment of 7 AAC 138.040 is made permanent and that section is further amended to read:

7 AAC 138.040. Service rates, service limits, and service authorization. (a)

Substance use disorder[SUD] 1115 waiver services rates are established in the department's *Chart of 1115 [MEDICAID] Waiver Services*, adopted by reference in 7 AAC 160.900.

(b) The department will not pay for **substance use disorder**[SUD] 1115 waiver services beyond the limits listed in the *Alaska Behavioral Health Providers Service Standards and Administrative Procedures* ~~[ALASKA PROVIDER BILLING MANUAL]~~, adopted by reference in 7 AAC 160.900, without prior authorization from the department.

(c) A provider of **substance use disorder**[SUD] 1115 waiver services must file a request for prior authorization of an extension of **a substance use disorder**[AN SUD] 1115 waiver service beyond service limitations using a form approved by the department. The request must

(1) be documented in the clinical record [ACCORDING TO 7 AAC 136.050(a)(6)];

(2) include the expected duration of the service; and

(3) include an explanation for the need **to extend** [OF THE EXTENSION OF] the service. [;]

(d) A provider that [THAT] meets the requirements of 7 AAC 136.020 may provide any **substance use disorder**[SUD] 1115 waiver service without prior authorization from the department.

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(e) The department may review a provider's clinical record to confirm the need for an extension of substance use disorder 1115 waiver services [THE SERVICE]. (Eff. 7/1/2019, Register 231; am 11 / 10 / 2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030

R 7 AAC 138
~~7 AAC 38~~

is changed to add a new article to read:

Article 2. Medicaid Substance Use Disorder 1115 Waiver Services.

Section

- 100. Assessment and treatment plan services.
- 200. Prevention and engagement services.
- 250. Outpatient substance use disorder treatment services.
- 300. Inpatient residential substance use disorder treatment services.
- 350. Alcohol and drug withdrawal management services.
- 400. Community-based support services.

The emergency amendment of 7 AAC 138.100 is made permanent and that section is further amended to read:

7 AAC 138.100. Assessment and treatment plan services. The department will pay a provider to

- (1) conduct an assessment according to 7 AAC 138.020(5) [7 AAC 138.020(a)(5)] for each recipient receiving substance use disorder services under this chapter;
- (2) develop an initial treatment plan for each recipient in accordance with 7 AAC 135.120; and

(3) review the treatment plan and revise the plan as necessary at least every 90 days; document the results of the treatment plan review in the clinical record; and include the name, signature, and credentials of the individual who conducted the review.

^{Not} (Eff. 7/1/ 2019, Register 231) ^{am} 11 / 10 / 2019, Register 232.)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: 7 AAC 138.100 was effective as an emergency regulation July 1, 2019. In reviewing the permanent amendments in accordance with AS 44.62.060 and 44.62.125, the regulations attorney made technical corrections to the emergency regulation made permanent. The technical changes appear in 7 AAC 138.100 as published in Register 232.

The emergency amendment of 7 AAC 138.200 is made permanent and that section is further amended to read:

7 AAC 138.200. Prevention and engagement services. (a) The department will pay for a screening conducted by a provider under this chapter if the provider uses

(1) one of the department-approved screening tools listed in the *Alaska Behavioral Health Providers Service Standards and Administrative Procedures*, adopted by reference in 7 AAC 160.900; and

(2) the results of the screening to identify an individual who is at risk for **a substance use disorder**[AN SUD] and to identify the need for further assessment.

(b) A provider of prevention and engagement services **under the 1115 waiver** is not required to conduct an assessment with a recipient or to develop a treatment plan under 7 AAC 135.120.

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(c) Prevention and engagement services under the 1115 waiver must be documented

according to the requirements established in 7 AAC 105.230. (Eff. 7/1/2019, Register 231); am 11 / 10 / 2019

Register 232)

Authority: AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.250 is made permanent and ^{that section is} further amended to read:

7 AAC 138.250. Outpatient substance use disorder treatment services. (a) The department will pay for the following outpatient substance use disorder[SUD] treatment services under the 1115 waiver if the service is provided according to this chapter:

- (1) intensive outpatient services;
- (2) partial hospitalization services. [PROGRAM]

(b) Providers may administer pharmacological treatment in conjunction with the outpatient substance use disorder treatment services in (a) of this section if the pharmacological treatment is provided by an individual listed in 7 AAC 135.010(b)(2). (Eff. 7/1/2019, Register 231; am 11 / 10 / 2019, Register 232.)

Authority: AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.300 is made permanent and that section is further amended to read:

7 AAC 138.300. Inpatient residential substance use disorder treatment services. (a) The department will pay for the following inpatient residential substance use disorder[SUD] treatment services under the 1115 waiver if the service is provided according to 7 AAC 138.030:

- (1) clinically managed low-intensity residential services [FOR ADULTS];

(2) repealed 11 / 10 / 2019;

(3) clinically managed population-specific high-intensity services for adults;

(4) clinically managed medium-intensity residential services for adolescents

[YOUTH];

(5) clinically managed high-intensity residential services for adults;

(6) medically monitored high-intensity inpatient services for adolescents

[YOUTH];

(7) medically monitored high-intensity inpatient services for adults;

(8) medically managed intensive inpatient services [FOR YOUTH];

(9) repealed 11 / 10 / 2019

(b) A provider of inpatient residential substance use disorder[SUD] treatment services under this chapter is exempt from the requirements of the Medicaid Institutions for Mental Diseases [(IMD)] exclusion under 42 U.S.C. 1396d(a)(29)(B) (section 1905(a)(B) of the Social Security Act).

(c) A provider may administer pharmacological treatment under the 1115 waiver in conjunction with inpatient residential substance use disorder [SUD] treatment services in (a) of this section if the pharmacological treatment is provided by an individual listed in 7 AAC 135.010(b)(2).

(d) ~~ALL~~ ^{U.C.} Inpatient ^[ALL INPATIENT] residential substance use disorder[SUD] treatment services under the 1115 waiver that are [IN ADDITION TO BEING] delivered during regular business hours must also be delivered [ACCORDING TO THE REQUIREMENTS OF THIS SECTION] during evening hours and on weekends and holidays based on provider staffing patterns and provider treatment services. (Eff. 7/1/2019, Register 231; am 11 / 10 / 2019, Register 232)

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Authority: AS 47.05.010

AS 47.07.030

The emergency amendment of 7 AAC 138.350 is made permanent and that section is further amended to read:

7 AAC 138.350. Alcohol and drug withdrawal management services. (a) The department will pay for the following alcohol and drug withdrawal management services **under the 1115 waiver for an adolescent or adult** if the service is provided according to 7 AAC 138.020:

(1) ambulatory withdrawal management without extended on-site monitoring [FOR YOUTH AND ADULT];

(2) ambulatory withdrawal management services with extended on-site monitoring [FOR YOUTH AND ADULT];

(3) clinically managed residential withdrawal management;

(4) medically monitored inpatient withdrawal management;

(5) medically managed intensive inpatient withdrawal management.

(b) A provider of alcohol and drug withdrawal management services under (a)(3) – (5) of this section is exempt from the requirements of the Medicaid Institutions for Mental Diseases [(IMD)] exclusion under 42 U.S.C. 1396d(a)(29)(B) (section 1905(a)(B) of the Social Security Act).

(c) The department will pay for pharmacological treatment **under the 1115 waiver** in conjunction with alcohol and drug withdrawal management services under (a) of this section if the pharmacological treatment is provided by an individual listed in 7 AAC 135.010(b)(2).

(d) **If an individual is determined to need alcohol or drug withdrawal services after an assessment under 7 AAC 138.020(5), the provider must conduct an evaluation of the individual using** [A PROVIDER MUST CONDUCT AN ASSESSMENT FOR A RECIPIENT OF ALCOHOL AND DRUG WITHDRAWAL MANAGEMENT SERVICES ACCORDING TO 7 AAC 138.020^{e.c.}(~~A~~)(5) AND THAT USES THE RESULTS OF] the:

(1) *Revised Clinical Institute Withdrawal Assessment for Alcohol Scale (CIWA-Ar)*, adopted by reference in 7 AAC 70.910; **and** [OR]

(2) *Clinical Opiate Withdrawal Scale [(COWS)]*, adopted by reference in 7 AAC 70.910. (Eff. 7/1/2019, Register 231; am 11 / 10 / 2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.400 is made permanent and that section is further amended to read:

7 AAC 138.400. Community-based support services and payment conditions. (a)

The department will pay a provider who meets the requirements of 7 AAC 138.020 for one or more of the following **substance use disorder**[SUD] 1115 waiver community-based support services provided to an eligible recipient under this chapter:

(1) community recovery support services that are provided [AS SKILL BUILDING, COUNSELING, AND SUPPORT] to promote recipient recovery **through skill building and counseling**, and provided to

(A) assist the recipient to build social, cognitive, daily living, employment, and self-management skills;

(B) educate and train the recipient and the recipient's family on behavioral health topics related to the recipient's treatment and recovery;

(C) help the recipient access necessary treatment and social support services;

(D) help the recipient participate in traditional healing or spiritual activities;

(E) facilitate level-of-care transitions; or

(F) assist the recipient with recovery through support, mentoring, or coaching, and [THE CONDUCT OF] the services listed in (A) – (E) of this paragraph provided by a peer support specialist who

(i) must have lived experience of **a substance use disorder**[AN SUD] or co-occurring mental health disorder or is a family member of an individual with lived experience;

(ii) must work under the supervision of a mental health professional clinician or a substance use disorder counselor; and

(iii) **is competent to provide services through supervised experience or formal training** [HAS COMPLETED A TRAINING PROGRAM APPROVED BY THE DEPARTMENT];

(2) **substance use disorder**[SUD] care coordination services **that must be** provided to a recipient receiving medication-assisted treatment in an outpatient care setting or an inpatient residential care setting, and are provided to

(A) integrate a recipient's behavioral health treatment with primary care and specialty medical services through interdisciplinary care planning and monitoring of treatment progress and outcomes;

(B) connect the recipient with appropriate community resources and social support services;

(C) help the recipient with level-of-care transition; and

(D) help the recipient develop skills needed for the self-management of treatment needs and the self-maintenance of long-term social supports;

(3) intensive case management services that are used to establish, organize, integrate, and modify the treatment and social support services and resources required to meet recipient needs, and are provided in collaboration with the recipient to

(A) facilitate provision of community-based social, educational, vocational, legal, and financial resources;

(B) obtain medical, behavioral health, or other specialized treatment services and social support services;

(C) monitor the safety and stability of the recipient and connect the recipient with crisis intervention services;

(D) coordinate the provision of services and exchange of information between treatment providers and social services agencies to help achieve the goals listed in the recipient's treatment plan;

(E) help the recipient engage in social relationships and natural community-based supports that enhance the recipient's quality of life; and

(F) help the recipient resolve conflicts and mediate solutions to problems with treatment providers, social support agencies, or natural community-based supports.

(b) **Services provided under (a)(1) of this section** [COMMUNITY RECOVERY SUPPORT SERVICES] may be provided concurrently with:

(1) any **1115 waiver** service listed in 7 AAC 138.250;

(2) ambulatory withdrawal management services **under the 1115 waiver** listed in 7 AAC 138.350(a); and

(3) a community-based support service listed in (a)(2) and (a)(3) of this section if the recipient is receiving services listed in (1) and (2) of this subsection.[:]

(c) **Substance use disorder** [SUD] care coordination services may be provided concurrently with any **1115 waiver** service listed in 7 AAC 138.250 – 7 AAC 138.350.[:]

(d) Intensive case management services may be provided concurrently with any service **under the 1115 waiver** listed in 7 AAC 138.250 – 7 AAC 138.350.

(e) In this section, “lived experience” means that **an individual has experienced or was treated** [THE EXPERIENCE OF OR TREATMENT] for a substance use related disorder or a co-occurring mental health disorder, or **is a family member who lived with a person with such a condition** [THE PROVISION OF CARE FOR SOMEONE WITH SUCH A CONDITION INCLUDING A FAMILY MEMBER OR ANOTHER INDIVIDUAL WHO RESIDES IN THE PERSON’S HOME]. **In this section, “family member” means a parent, step-parent, sibling, step-sibling, spouse, grandparent, aunt or uncle.** (Eff. 7/1/2019,

Register 231; am 11 / 10 / 2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 138 is amended by adding a new section to Article 2 to read:

7 AAC 138.410. Requirement to pay substance use disorder care coordination services. An eligible individual under this chapter who is receiving medication-assisted treatment in an outpatient or inpatient care settings must also receive substance use disorder care coordination services under the 1115 waiver. (Eff. 11 / 10 / 2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030

Article 3. General Provisions.

The emergency amendment of 7 AAC 138.900 is made permanent to read:

7 AAC 138.900. Transition to 1115 waiver services. (a) A provider may only provide the **1115 waiver** services listed in this chapter upon approval by the department in accordance with 7 AAC 136.020.

(b) A provider must update a [THE] recipient treatment plan in accordance with 7 AAC 135.130 before providing a new service listed in this chapter for a recipient that is currently receiving services under 7 AAC 70 and 7 AAC 135. (Eff. 7/1/2019, Register 231)

Authority: AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 160.900(d) adding new paragraphs is made permanent and that section is further amended to read:

(63) *Alaska Behavioral Health Providers Service Standards and Administrative Procedures*, **October 7**, [JUNE] 2019 Edition;

Register 232, ~~JANUARY~~ 2020 HEALTH AND SOCIAL SERVICES

(64) Chart of 1115 Waiver Services [SPECIAL TERMS AND CONDITIONS FOR SECTION 1115(A) ^{L.C.} DEMONSTRATION: ALASKA SUBSTANCE USE DISORDER AND BEHAVIORAL HEALTH PROGRAM], June [JANUARY] 2019 Edition.

(Eff. 2/1/2010, Register 193; am 8/25/2010, Register 195; am 12/1/2010, Register 196; am 1/1/2011, Register 196; am 1/15/2011, Register 197; am 2/9/2011, Register 197; am 3/1/2011, Register 197; am 10/1/2011, Register 199; am 12/1/2011, Register 200; am 1/26/2012, Register 201; am 3/8/2012, Register 201; am 4/1/2012, Register 201; add'l am 4/1/2012, Register 201; am 5/11/2012, Register 202; am 10/16/2012, Register 204; am 11/3/2012, Register 204; am 12/1/2012, Register 204; am 12/2/2012, Register 204; am 1/1/2013, Register 204; am 1/16/2013, Register 205; am 7/1/2013, Register 206; add'l am 7/1/2013, Register 206; am 11/3/2013, Register 208; am 1/1/2014, Register 208; am 2/2/2014, Register 209; am 3/19/2014, Register 209; am 3/22/2014, Register 209; am 5/18/2014, Register 210; am 2/26/2015, Register 213; am 3/15/2015, Register 213; am 7/1/2015, Register 214; am 5/1/2016, Register 218; am 6/16/2016, Register 218; am 6/16/2016, Register 218; am 7/22/2017, Register 223; am 11/5/2017, Register 224; am 3/1/2018, Register 225; am 10/1/2018, Register 227; am 1/1/2019, Register 228; am 3/24/2019, Register 229; am 7/1/2019, Register 231; am 11/10/2019, Register 232)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.012

The emergency amendment of 7 AAC 160.990 adding new paragraphs is made permanent to read:

(110) repealed 11/10/2019 ["SUD" MEANS SUBSTANCE USE DISORDER];

(111) “1115 waiver” means the Substance Use Disorder [TREATMENT] and [ALASKA] Behavioral Health Program demonstration approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services as a section 1115 waiver under 42 U.S.C. 1315 (a) [CMS]. (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; am 6/29/2017, Register 222; am 10/1/2018, Register 227; am 7/1/2019, Register 231)

Editor’s note: 7 AAC 160.990(110) and (111) were effective as an emergency regulation July 1, 2019. In accordance with AS 44.62.060 and 44.62.125, the regulations attorney made technical corrections to the emergency regulation made permanent. The technical changes appear in 7 AAC 160.990 as published in Register 232.

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: October 10, 2019

File No.: 2019200445

Tel. No.: 465-3600

From: Susan R. Pollard *ATW*
Chief Assistant Attorney General *for SRP*
and Regulations Attorney
Legislation and Regulations Section

Re: Department of Health and Social
Services Regulation re: 7 AAC 136,
138: Div. of Behavioral Health:
Behavioral; 1115 Waiver

The Department of Law has reviewed the attached regulations of the Department of Health and Social Services against the statutory standards of the Administrative Procedure Act. Based upon our review, 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.

In submitting the emergency regulations, the commissioner of the Department of Health and Social Services found that lack of access to needful healthcare, especially psychiatric emergency services and inpatient and residential substance use disorder treatment services, required implementation of needed services through emergency regulation. The basis of the department's ability to provide these services is a waiver approved by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services under 42 U.S. C. 1315(a) (1115 waiver). That waiver will allow providers to expand inpatient and residential substance use disorder treatment services.

The regulations establish new chapters in 7 AAC: Chapter 136 is the general establishment of the Substance Use Disorder and Behavioral Health Program; chapter 138 establishes the scope, eligibility, and services for substance use disorder treatment under the 1115 waiver.

The regulations were adopted by the Department of Health and Social Services as emergency regulations effective July 1, 2019. They will expire October 28, 2019, unless made permanent through certification by that date. In this filing, the department is making the regulations permanent. Some of the regulations are basically unchanged (except for minor technical changes) from the emergency regulations: 7 AAC 136.010, 7 AAC 136.020, and 7 AAC 160.990. Accordingly, the history note for those regulations

made permanent without substantive changes reflects only the July 1, 2019, effective date and includes editor's notes to follow the regulation. They will appear as permanent regulations reflecting the technical changes in the January 232 register.

Other regulations also effective July 1, 2019, are made permanent, but with changes reflective of improvements identified by the department in the notice and comment period. Those regulations amended from the July 1, 2019, emergency versions are 7 AAC 138.010, 7 AAC 138.020, 7 AAC 138.030, 7 AAC 138.040, 7 AAC 138.100, 7 AAC 138.200, 7 AAC 138.250, 7 AAC 138.300, 7 AAC 138.350, 7 AAC 138.400, 7 AAC 138.410 (new), and 7 AAC 160.900. These regulations were effective July 1, 2019, with amendments made in this filing 30 days after filing. Accordingly, the history note reflects a blank to fill in the date 30 days after filing; at that date, the amendments will be effective. The regulations will appear, as amended, in the January 232 register.

This package is more complicated than most emergency regulations because it involves numerous regulations, some being made permanent with changes, some not. We may need to work with the publisher to ensure correct publication.

The October 8, 2019, adoption order states that this action is not expected to require an increased appropriation. Therefore, a new fiscal note under AS 44.62.195 is not required. The original fiscal note submitted with the June 28, 2019, emergency adoption is provided.

SRP:sjw

cc: Honorable Adam Crum, Commissioner
Department of Health and Social Services
Rick Calcote, Mental Health Clinician
Department of Health and Social Services
Triptaa Surve, Regulations Contact
Department of Health and Social Services
Kelly Henriksen, Assistant Attorney General
Department of Law
Stacie Kraly, Assistant Attorney General
Department of Law

NOTICE OF ADOPTION OF EMERGENCY REGULATION ON MEDICAID COVERAGE & PAYMENT,
BEHAVIORAL HEALTH SERVICES, 1115 WAIVER SERVICES, OF THE DEPARTMENT OF HEALTH &
SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to make permanent regulation changes made by emergency regulation on Medicaid coverage and payment related to behavioral health services, 1115 waiver services.

On June 28, 2019, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid coverage and payment related to 1115 waiver services, including the following:

- 7 AAC is proposed to be changed as follows: Add two new chapters, 7 AAC 136. Behavioral Health 1115 Demonstration Waiver, and 7 AAC 138. Substance Use Disorder Waiver Services.

The emergency regulation takes effect on July 1, 2019, and will expire October 28, 2019. The Department of Health & Social Services intends to make the emergency regulation permanent.

You may comment on the regulation changes, including the potential costs to private persons of complying with the changes, by submitting written comments to Mr. Rick Calcote, State of Alaska, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, AK 99503. Additionally, the Department of Health & Social Services will accept comments by electronic mail at rick.calcote@alaska.gov. The comments must be received not later than 5 p.m. on August 8, 2019.

You may submit written questions relevant to the proposed action to Mr. Rick Calcote, by electronic mail at rick.calcote@alaska.gov or at the State of Alaska, Department of Health & Social Services, Division of Behavioral Health, at 3601 C Street, Suite 878, 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 responses available on the Alaska Online Public Notice System. The Department of Health & Social Services may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Mr. Rick Calcote at rick.calcote@alaska.gov not later than July 11, 2019, to ensure that any necessary accommodation can be provided.

A copy of the emergency regulation is available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/Default.aspx> and by contacting Mr. Rick Calcote at rick.calcote@alaska.gov or at (907) 269-3617.

A copy of material proposed for adoption by reference may be viewed at the agency's office at the State of

Alaska, Department of Health & Social Services, Division of Behavioral Health, 3601 C Street, Suite 878, Anchorage, AK 99503.

The language of the permanent regulations may be different from that of the original emergency regulation and may include other provisions dealing with the same subject. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 47.05.010; AS 47.05.012; AS 47.07.030; AS 47.07.040.

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

Fiscal information: It is estimated that the regulations will require increased appropriations as follows (in thousands of dollars): FY 2020= \$124; FY2021= \$954.0; FY2022= \$1,766.

DATE: June 28, 2019.

/s/Adam Crum

Commissioner,

Department of Health & Social Services.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Health & Social Services
2. General subject of regulation: Medicaid Coverage & Payment; Behavioral Health Services; 1115 Waiver Services; Substance Use Disorder Waiver Services.
3. Citation of regulation (may be grouped): New Chapters- 7 AAC 136; 7 AAC 138.
4. Department of Law file number, if any: 2019200445

5. Reason for the proposed action:
 - () Compliance with federal law or action (identify): _____
 - (X) Compliance with new or changed state statute
 - () Compliance with federal or state court decision (identify): _____
 - (X) Development of program standards
 - () Other (identify): _____

6. Appropriation/Allocation: Medicaid/Medicaid Services

7. Estimated annual cost to comply with the proposed action to:
 - 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): \$124.

	Initial Year FY2020 ____	Subsequent Years- FY2021	FY2022
Operating Cost	\$ _____	\$ _____	
Capital Cost	\$ _____	\$ _____	
1002 Federal receipts	<u>\$109.1</u>	<u>\$839.5</u>	<u>\$1,554.</u>
1003 General fund match	<u>\$14.9</u>	<u>\$114.5</u>	<u>\$212.0</u>
1004 General fund	\$ _____	\$ _____	
1005 General fund/ program	\$ _____	\$ _____	
Other (identify)-Grants & Benefits	<u>\$124.</u>	<u>\$954.</u>	<u>\$1,776.</u>

9. The name of the contact person for the regulation:
 - Name: Rick Calcote
 - Title: Mental Health Clinician III
 - Address: 3601 C St., 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 change⁷
 Other (identify): _____

11. Date: 6-27-19 Prepared by: Rick Calcote, MSW
[signature]

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

FISCAL NOTE

Agency: Department of Health & Social Services.

Appropriation/Allocation: Medicaid/Medicaid Services

General subject of regulation: Medicaid Coverage & Payment; Behavioral Health Services; 1115 Waiver Services; Substance Use Disorder Waiver Services.

Citation of regulation: New Chapters- 7 AAC 136; 7 AAC 138.

Estimated appropriations required (in thousands of dollars) \$124.

Expenditures/Revenues

	FY __ Appropriation Requested		
	(Thousands of Dollars)		
OPERATING EXPENDITURES	FY2020	FY2021	FY2022
Personal Services			
Travel			
Services			
Commodities			
Capital Outlay			
Grants & Benefits	\$124.	\$954.	\$1,766.
Miscellaneous			
TOTAL OPERATING			

FUNDING SOURCE		(Thousands of Dollars)		
1002	Federal Receipts	\$109.1	\$839.5	\$1,554.
1003	GF Match	\$14.9	\$114.5	\$212.0
1004	General Fund			
1005	GF/Program (DGF)			
1007	I/A Rcpts (Other)			
1037	GF/MH (UGF)			

POSITIONS			
Full-time			
Part-time			
Temporary			

CHANGE IN REVENUES			

Date 6.27.19

Prepared by: R.M. Calcote

Rick M. Calcote
Mental Health Clinician III
Division of Behavioral Health/Department of Health & Social Services
Telephone Number: (907) 269-3617

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

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STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin

being first duly sworn on oath deposes and says that he/she is a representative of the Anchorage Daily 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

July 02, 2019

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 Joleesa Stepetin
Joleesa Stepetin

Subscribed and sworn to before me
this 3rd day of July, 2019

Jade L. Nowling
Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

7/14/2020

STATE OF ALASKA
NOTARY
PUBLIC
Jade L. Nowling

NOTICE OF ADOPTION OF EMERGENCY REGULATION ON MEDICAID COVERAGE & PAYMENT, BEHAVIORAL HEALTH SERVICES, 1115 WAIVER SERVICES, OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

On June 28, 2019, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid coverage and payment related to 1115 waiver services, including the following:

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A copy of material proposed for adoption by reference is available on the Alaska Online Public Notice System and may be viewed at the agency's office at the State of Alaska, Department of Health & Social Services, Division of Behavioral Health, 3601 C

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AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Rick Calcote, Mental Health Clinician III, of the 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 136, 138. Medicaid Coverage & Payment; Behavioral Health Services; 1115 Waiver Services; Substance Use Disorder Waiver Services, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

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 (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: September 27, 2019

Rick Calcote, III
Rick Calcote, Mental Health Clinician III

Subscribed and sworn to before me at Alaska, Anchorage on

September 27, 2019
(date)

Cheyl Patterson
Notary Public in and for the State of Alaska



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Rick Calcote, Mental Health Clinician III, of the Department of Health & Social Services, being sworn, state the following:

In compliance with AS 44.62.215, the Department of Health & 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 & Social Services regulation on 7 AAC 136, 138. Medicaid Coverage & Payment; Behavioral Health Services; 1115 Waiver Services; Substance Use Disorder Waiver Services.

Date: September 27, 2019

Rick Calcote, MHC
Rick Calcote, Mental Health Clinician III

Subscribed and sworn to before me at Alaska, Anchorage on
September 27, 2019
(date)

Cheryl Patterson
Notary Public in and for the State of Alaska

[NOTARY SEAL]



Chart of 1115 Medicaid Waiver Services

Unit	Service Description	Procedure Code/Modifier	Rate
15 minutes	Intensive Case Management	H0023 V1	\$ 28.07
15 minutes	Ambulatory Withdrawal Management	H0014 V1	\$ 30.00
Daily	Clinically Managed Residential Withdrawal Management	H0010 V1	\$ 302.25
Daily	Medically Monitored Inpatient Withdrawal Management 3.7 WD	H0010 V1 TG	\$ 900.00
Daily	Medically Managed Intensive Inpatient Withdrawal Management 4.0 WD	H0011 V1	\$ 1,500.00
Daily	Medically Monitored Intensive Inpatient Services 3.7	H0009 V1 TF	\$ 900.00
Daily	Medically Managed Intensive Inpatient Services 4.0	H0009 V1 TG	\$ 1,500.00
15 minutes	Community & Recovery Support Services - Individual	H2021 V1	\$ 21.46
15 minutes	Community & Recovery Support Services - Individual (Telehealth)	H2021 V1 GT	\$ 21.46
15 minutes	Community & Recovery Support Services - Group	H2021 V1 HQ	\$ 5.63
15 minutes	Community & Recovery Support Services - Group (Telehealth)	H2021 V1 HQ GT	\$ 5.63
Monthly	SUD Care Coordination	H0047 V1	\$ 300.00
Monthly	SUD Care Coordination (Telehealth)	H0047 V1 GT	\$ 300.00
15 minutes	Intensive Outpatient ASAM 2.1 - Individual	H0015 V1	\$ 29.61
15 minutes	Intensive Outpatient ASAM 2.1 - Individual (Telehealth)	H0015 V1 GT	\$ 29.61
15 minutes	Intensive Outpatient ASAM 2.1 - Group	H0015 V1 HQ	\$ 7.77
15 minutes	Intensive Outpatient ASAM 2.1 - Group (Telehealth)	H0015 V1 HQ GT	\$ 7.77
Per Assessment	Treatment Plan Development/Review	T1007 V1	\$ 135.43
Per Assessment	Treatment Plan Development/Review (Telehealth)	T1007 V1 GT	\$ 135.43
Daily	Partial Hospitalization	H0035 V1	\$ 500.00
Daily	SUD Residential 3.1 (Adult)	H2036 V1 HF	\$ 400.83
Daily	SUD Residential 3.1 (Adolescent)	H2036 V1 HA	\$ 348.39
Daily	SUD Residential 3.3	H0047 V2	\$ 615.94
Daily	SUD Residential 3.5 (Adult)	H0047 V1 TG	\$ 455.29
Daily	SUD Residential 3.5 (Adolescent)	H0047 V1 TF HA	\$ 498.62

Revision Date: 10/07/2019