

Kevin Meyer
Lieutenant Governor
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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

A handwritten signature in blue ink, appearing to read "April Simpson".

DATE: January 7, 2020

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

Department of Health and Social Services Regulation re: Medicaid, Provider & Recipient Participation; Duty of Provider (7 AAC 105, 160)

Attorney General File:	2019200651
Regulation Filed:	1/7/2020
Effective Date:	2/6/2020
Print:	233, April 2020

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

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

The attached 7 pages of regulations, dealing with the 72 Hour Rule & Provider Self-Audits, specifically, Medicaid, Provider & Recipient Participation; Duty of Provider to Identify & Repay Self-Identified Overpayments (7 AAC 105, 160), 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 47.05.200, AS 47.05.235, AS 47.07.030, AS 47.07.040, AS 47.07.074, 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 and 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: 12/16/19


Adam Crum, Commissioner
Department of Health & Social Services

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that¹ on January 7,
2020, at 2:47 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.

April Simpson
for Lieutenant Governor Kevin Meyer

Effective: February 6, 2020.

Register: 233, April 2020.

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.



Kevin Meyer

**KEVIN MEYER
LIEUTENANT GOVERNOR**

The introductory language of 7 AAC 105.230(d) is amended to read:

(d) A provider shall maintain a clinical or therapeutic record [, INCLUDING A RECORD OF THERAPEUTIC SERVICES,] in accordance with professional standards applicable to the provider, for each recipient. The clinical record must include

...

7 AAC 105.230(d)(5) is amended to read:

(5) start [STOP] and stop [START] times for time-based billing codes;

(A) a provider may only bill for a unit of service if the actual direct service time spent is in excess of 50 percent of the time value of the procedure code billed;

(B) direct service time associated with a particular procedure code shall be calculated in the aggregate [ACCUMULATED] by the direct service provider for each date of service when determining the appropriate number of units that may be billed;

(C) a provider may not use pre-populated clinical notes or time-sheets to document actual start [STOP] and stop [START] times;

(D) a provider may not bill for services without proper start and stop times [TIME-IN AND TIME-OUT] documentation;

(E) the use of documentation that does not specify both start and stop times [TIME IN AND TIME OUT] will result in an overpayment;

(F) the following table shall be used when billing for time-based billing codes under this section and identifies the appropriate number of units to bill using a 15-minute time-based code:

Units	Number of Minutes of Direct Service Time
1	≥ 8 minutes through 22 minutes
2	≥ 23 minutes through 37 minutes
3	≥ 38 minutes through 52 minutes
4	≥ 53 [52] minutes through 67 minutes
5	≥ 68 minutes through 82 minutes
6	≥ 83 minutes through 97 minutes
7	≥ 98 minutes through 112 minutes
8	≥ 113 minutes through 127 minutes
The pattern remains the same for direct service times in excess of 2 hours.	

7 AAC 105.230(d)(6) is amended to read:

(6) annotated case notes identifying each service or supply delivered;

(A) the case notes must be dated and either signed or initialed by the individual who provided each service;

(B) for electronic records, an electronic signature that complies with the requirements of AS 09.80 (Uniform Electronic Transactions Act) satisfies the signature requirement under this section [; THE INDIVIDUAL WHOSE NAME IS ON THE ELECTRONIC SIGNATURE AND THE PROVIDER BEAR THE RESPONSIBILITY FOR THE AUTHENTICITY OF THE INFORMATION BEING ATTESTED TO]; and

7 AAC 105.230(d)(7) is repealed and readopted to read:

(7) except for facilities identified in 7 AAC 12.990(26), all records maintained contemporaneously with the service provided; for purposes of this section, contemporaneous record keeping means documentation is done not later than 14 days after the service ends; a provider may not bill for services for which records were not kept contemporaneously as required under this section.

7 AAC 105.230(h) is amended to read:

(h) A provider may not submit a claim to the department for a service if a provider does not maintain records in compliance with this chapter, **including records that must be maintained contemporaneously under this section.**

7 AAC 105.230 is amended by adding new subsections to read:

(i) Documentation of start and stop times as set out in this section is not required for evaluation and management codes, but documentation must be maintained in accordance with professional guidance as adopted by reference in 7 AAC 160.900(a).

(j) Any claim submitted for reimbursement for which the provider fails to maintain documentation required by this section is considered an overpayment and subject to recoupment under 7 AAC 105.260. (Eff. 2/1/2010, Register 193; am 6/7/2018, Register 226; am

2/6/2020 Register 233)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 160.115(d) is amended to read:

(d) If a provider identifies overpayments through the biennial review or audit, [DURING THE NORMAL COURSE OF BUSINESS, OR BOTH,] the provider shall report each overpayment to the department not later than 10 business days after identification of that overpayment. **Overpayment reports shall be submitted to the Department of Health and Social Services, Office of the Commissioner, Medicaid Program Integrity.** In this subsection, "business day" means a day other than Saturday, Sunday, or a legal holiday under AS 44.12.010.

7 AAC 160.115(e) is amended to read:

(e) A provider who was reimbursed

(1) \$30,000 or greater for services during the year shall submit a report to the department detailing the claims audited or reviewed together with the results of that review or audit; [. A PROVIDER WHO WAS REIMBURSED]

(2) \$10,000 or greater but less than \$30,000 is not required to submit the report to the department but must have the report available for review by the department; [. A PROVIDER WHO WAS REIMBURSED]

(3) less than \$10,000 is not required to produce a report but shall have an [A] attestation form on file and available for review by the department [. THE REPORT SHALL BE MADE IN WRITING, INCLUDE AN ATTESTATION ON A FORM PRESCRIBED BY THE DEPARTMENT, AND BE SUBMITTED, IF REQUIRED, TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES, OFFICE OF THE COMMISSIONER, MEDICAID PROGRAM INTEGRITY. THE REIMBURSEMENT VALUES REFERENCED ARE BASED UPON THE REIMBURSEMENT VALUES REPORTED IN EACH UNITED STATES INTERNAL REVENUE SERVICE FORM 1099 THAT THE DEPARTMENT ISSUES TO THE PROVIDER BY CALENDAR YEAR].

7 AAC 160.115(f) is repealed and readopted to read:

(f) The reimbursement values referenced in (e) of this section are based upon the reimbursement values reported in each United States Internal Revenue Service form 1099 that the department issues to the provider by calendar year.

7 AAC 160.115(g) is repealed and readopted to read:

(g) The report or attestation required under this section must be made in writing on a form approved by the department and submitted, if required, to the Department of Health and Social Services, Office of the Commissioner, Medicaid Program Integrity. The report must include

- (1) the method used to sample the claims;
- (2) the sampled claims Medicaid assigned transaction control number (TCN);
- (3) the outcome of the individual claim audit;
- (4) the identified amount of overpayment back to the department; and
- (5) if appropriate, a corrective action plan.

7 AAC 160.115(h) is repealed and readopted to read:

(h) A provider shall retain all audit documents, reports, and attestations created as a result of the review for at least seven calendar years following completion.

7 AAC 160.115(i) is repealed and readopted to read:

(i) Not later than 60 days after identification of the overpayment, the provider shall repay the department unless the provider has a repayment agreement with the department. The department may, in the repayment agreement, authorize repayment through one of the following means:

- (1) a lump sum payable not later than two months after the date of the discovery of the overpayment;
- (2) a payment plan not to exceed two years in length; the department may extend the payment plan beyond two years based on the following factors:

(A) the provider's history of compliance with the Medicaid program generally, including prior payment agreements;

(B) the amount of the overpayment;

(C) the amount of revenue the provider is receiving from Medicaid;

(D) any other factors that would impact repayment, such as type of services being provided;

(3) by offsetting future billings by the provider; if a provider chooses to offset future billings, the amount offset must be repaid not later than two years from the date of the agreement.

7 AAC 160.115 is amended by adding new subsections to read:

(j) If a provider defaults on a repayment under (i) of this section, the department may require immediate payment of the total amount due. If a provider defaults on paying the total amount, the provider is subject to sanctions under 7 AAC 105.400 - 7 AAC 105.490. Sanctions may include termination from the Medicaid program in accordance with 7 AAC 105.410.

(k) Under this section, an overpayment is identified when the provider has, through the exercise of reasonable diligence, determined that the provider has received an overpayment and quantified the amount of the overpayment.

(l) The department may review the results of a provider-conducted self-review for accuracy. If the provider does not provide an opportunity for department review under this subsection or obstructs the review, or if the department determines that the provider's self-review is inaccurate, the department may impose sanctions under 7 AAC 105.400 - 7 AAC 105.490.

(m) For purposes of this section,

(1) "default" means any default that results in written notice from the department;

(2) “immediate repayment” means a payment this is made not later than 30 days after written notice is provided under (m)(1) of this section. (Eff. 6/7/2018, Register 226; am 2 / 6 / 2020, Register 233)

Authority: AS 47.05.010 AS 47.05.235 AS 47.07.040
AS 47.05.200 AS 47.07.030 AS 47.07.074

The editor’s note in 7 AAC 160.115 is changed to read:

Editor’s note: For information regarding the conduct of a self-audit, please refer to the CMS self-audit toolkit, Conducting a Self-Audit: A Guide for Physicians and Other Health Care Professionals, February 2016. The toolkit may be obtained at the following website:

<https://www.cms.gov/Medicare-Medicaid-Coordination-Fraud-Prevention/Medicaid-Integrity-Education/audit-toolkit.html>. The address of the Department of Health and Social Services,

Office of the Commissioner, Medicaid Program Integrity is 3601 C Street, Anchorage, Alaska 99503.

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: December 20, 2019

File No.: 2019200651

Tel. No.: 465-3600

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

Re: Department of Health and Social
Services Regulation re: 7 AAC 105,
160: Medicaid, Provider & Recipient
Participation; Duty of Provider

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. The regulations were adopted by the Department of Health and Social Services after the close of the public comment period. The regulations concern the Medicaid provider documentation rule and provider self-audits. Previously, 7 AAC 105.230(d)(7) required maintenance of provider records contemporaneously with services provided or within 72 hours from the end of service. In response to provider concerns, the department has revised the contemporaneous record keeping through amendments to 7 AAC 105.230(d)(7) to continue to require contemporaneous record keeping to be completed not later than 14 days after the service ends. The regulation still requires contemporaneous record-keeping as a condition of billing. The regulations make other changes to clarify provider time-keeping responsibilities and overpayment identification responsibilities.

The public notice and the 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.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:hjh

cc: Honorable Adam Crum, Commissioner
Department of Health and Social Services

Triptaa Surve, Regulations Contact
Department of Health and Social Services

April Simpson, AAC Coordinator
Office of the Lieutenant Governor

Stacie Kraly, Assistant Attorney General
Department of Law

NOTICE OF PROPOSED CHANGES ON THE 72 HOUR DOCUMENTATION REQUIREMENT AND PROVIDER SELF-AUDITS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on provider medical record documentation requirements related to the Medicaid provider 72 hour documentation rule and provider self-audits.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with the Medicaid provider 72 hour documentation rule and provider self-audits, including the following:

- 7 AAC 105.230. Medicaid Provider and Recipient Participation; Requirements for provider records, is proposed to be changed as follows:
 - Adopt a 14-days documentation standard for all providers.
 - Clarify what is considered a time based code to maintain start and stop times.
 - Reduce record keeping requirements for evaluation and management codes.
- 7 AAC 160.115. Medicaid Program; General Provisions; Duty of a provider to identify and repay self-identified overpayments, is proposed to be changed as follows:
 - Adopt the Medicare definition of "identified" for a provider to return an overpayment.
 - Clarify what a provider self-audit report must contain.

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 Mr. Doug Jones at 4501 Business Park Blvd., Ste. 24, Building L, Anchorage, AK 99503. Additionally, the Department of Health & Social Services will accept comments by facsimile at (907) 269-3460 and by electronic mail at douglas.jones@alaska.gov. The comments must be received not later than 5 p.m. on October 2, 2019.

You may submit written questions relevant to the proposed action to Mr. Doug Jones at douglas.jones@alaska.gov or 4501 Business Park Blvd., Ste. 24, Building L, 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.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Mr. Doug Jones at (907) 269-0361 not later than September 16, 2019, 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 Mr. Doug Jones at douglas.jones@alaska.gov or 4501 Business Park Blvd., Ste. 24, Building L, Anchorage, AK 99503.

After the public comment period ends, the Department of Health & Social Services will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. 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 47.05.200; AS 47.05.235; AS 47.07.030; AS 47.07.040; AS 47.07.074.

Statutes being implemented, interpreted, or made specific: AS 47.05.010; AS 47.05.200; AS 47.05.235; AS 47.07.030; AS 47.07.040; AS 47.07.074.

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

The Department of Health & Social Services/Medicaid Program Integrity keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Department of Health & Social Services/Medicaid Program Integrity notices of proposed regulation changes. To be added to or removed from the list, send a request to the Department of Health & Social Services/Medicaid Program Integrity at douglas.jones@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

DATE:

August 14, 2019.



Adam Crum
Commissioner,
Department of Health & Social Services

NOTICE OF PROPOSED CHANGES ON THE 72 HOUR DOCUMENTATION REQUIREMENT AND
PROVIDER SELF-AUDITS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL
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DATE: August 14, 2019.


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: Requirements for Provider's Records and Duty of a provider to identify and repay self-identified overpayments
3. Citation of regulation (may be grouped): 7 AAC 105.230; 7 AAC 160.115
4. Department of Law file number, if any: 2019200651

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

6. Appropriation/Allocation: N/A

7. Estimated annual cost to comply with the proposed action to:
A private person: \$0.
Another state agency: \$0.
A municipality: \$0.


8. Cost of implementation to the state agency and available funding (in thousands of dollars): None.

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

9. The name of the contact person for the regulation:
Name: Douglas Jones
Title: Manager, Medicaid Program Integrity
Address: 4501 Business Park Blvd., Ste. 24, Bldg. K, Anchorage, AK 99503
Telephone: (907) 269-0361
E-mail address: douglas.jones@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: 8/14/2019 Prepared by: 
[signature]
Name (printed): Doug Jones
Title (printed): Audit & Review Analyst IV
Telephone: (907) 269-0361

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270229 ST OF AK/DHSS/COMMISSIONERS

Order #: W0011184

Cost: \$448.22

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin being first duly sworn on oath deposes and says that 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

08/18/2019

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

Subscribed and sworn to before me
this 19th day of August 2019.

Jada 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
Jada L. Nowling

NOTICE OF PROPOSED CHANGES ON THE 72 HOUR DOCUMENTATION REQUIREMENT AND PROVIDER SELF-AUDITS IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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DATE: August 14, 2019.

/s/Adam Crum Commissioner,
Department of Health & Social Services

Published: August 18, 2019

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Douglas Jones, Audit & Review Analyst IV, 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 105, 160: Medicaid, Provider & Recipient Participation; Duty of Provider to Identify & Repay Self-Identified Overpayments, 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: 10/21/2019



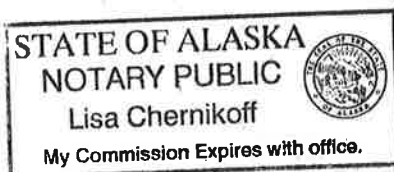
Douglas Jones, Audit & Review Analyst IV

Subscribed and sworn to before me at Anchorage, Alaska
on October 22, 2019.
(date)

Lisa Chernikoff

Notary Public in and for the State of Alaska

[NOTARY SEAL]



AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Douglas Jones, Audit & Review Analyst IV, 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 105, 160: Medicaid, Provider & Recipient Participation; Duty of Provider to Identify & Repay Self-Identified Overpayments.

Date: 10/21/2019

Douglas Jones
Douglas Jones, Audit & Review Analyst IV

Subscribed and sworn to before me at Anchorage, AK
on October 22, 2019
(date)

Lisa Chernikoff
Notary Public in and for the State of Alaska

[NOTARY SEAL]

