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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

DATE: May 1, 2020

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

Department of Health and Social Services regulations re: Medicaid coverage and payment regulations regarding transportation and accommodation services (7 AAC 120.405 - 7 AAC 120.430)

| | |
|------------------------|----------------|
| Attorney General File: | 2018200907 |
| Regulation Filed: | 5/1/2020 |
| Effective Date: | 7/1/2020 |
| Print: | 234, July 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 6 pages of regulations, dealing with Medicaid Coverage, Transportation and Accommodation Services, 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, and AS 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 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 July 1, 2020, as provided in AS 44.62.180.

Date: 4/24/2020

Adam Crum Digitally signed by Adam Crum
Date: 2020.04.24 16:54:21 -08'00'

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 May 1st,
2020, at 3:55p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.

for April Simpson

Lieutenant Governor *Kevin Meyer*

Effective: July 1, 2020.

Register: 234, July 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.**



A handwritten signature in blue ink, appearing to read "K. Meyer", is written over a horizontal dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

Register 234 July 2020 HEALTH AND SOCIAL SERVICES

The introductory language of 7 AAC 120.405(b) is amended to read:

(b) The department will [MAY] approve nonemergency transportation and accommodation services [ACCOMMODATIONS] outside the recipient's community of residence to obtain medically necessary services covered under 7 AAC 105 - 7 AAC 160 for the recipient if the prior authorization requirements of 7 AAC 120.410 are met and

• • •

7 AAC 120.405(c) is amended to read:

(c) The department will not pay for

(1) transportation or accommodations that the department determines to be excessive or inappropriate for the distance traveled or inconsistent with the medical needs of the recipient;

(2) transportation for a recipient two years of age or younger if the department pays the cost for an escort to accompany the child, unless the condition of the child prevents the child from riding in the same seat as the escort;

(3) transportation for a recipient who is an inpatient in a general acute care hospital and who is being transported to another location to receive medical services if the recipient remains a recipient in the general acute care hospital while absent and is to be returned to the general acute care hospital;

(4) except as provided in 7 AAC 120.415(a), transportation for a recipient or an authorized escort to travel to receive services from a [HEALTH CARE PROVIDER OR MEDICAID SERVICE] provider that is not enrolled as a Medicaid provider under 7 AAC 105 -

7 AAC 160 [IN THIS STATE BY THE DEPARTMENT] at the time the travel occurs, unless the provider is a military or veterans' facility;

(5) transportation and accommodations on weekends if

(A) travel on a weekday would shorten the length of the trip;

(B) the department did not give prior authorization for the weekend

travel; or

(C) the weekend travel is not medically necessary; or

(6) [GROUND TRANSPORTATION, INCLUDING TRAVEL BY AUTOMOBILE, TAXI, AND BUS, FOR A RECIPIENT TO TRAVEL TO A HEALTH CARE PROVIDER WITHIN THE RECIPIENT'S COMMUNITY OF RESIDENCE, UNLESS

(A) THE RECIPIENT'S MEDICAL CONDITION JUSTIFIES THE NEED FOR THE TRANSPORTATION;

(B) AN UNDUE HARDSHIP WOULD RESULT FROM A DENIAL OF THE TRANSPORTATION; OR

(C) THE TRANSPORTATION IS REQUIRED AS AN EPSDT SERVICE; OR

(7)] separate accommodations for a recipient and escort, unless the department determines that the circumstances warrant separate accommodations.

(Eff. 2/1/2010, Register 193; am 5/1/2016, Register 218; am 7 / 1 / 2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 120.410 is repealed and readopted to read:

7 AAC 120.410. Nonemergency transportation services. (a) The department will pay for the least expensive mode of nonemergency transportation to and from an appointment with the closest appropriate provider for a recipient if the

- (1) services are medically necessary and covered under 7 AAC 105 - 7 AAC 160;
- (2) provider is enrolled under 7 AAC 105.210 at the time the travel occurs; and
- (3) recipient does not have transportation available on the recipient's own or

through any voluntary source.

(b) In determining the mode of nonemergency transportation authorized, the department will consider the

- (1) recipient's physical and mental condition;
- (2) distance to the appointment;
- (3) length of time that travelling to the appointment will take; and
- (4) availability of commercial transportation providers.

(c) Payment for nonemergency transportation services, except for transportation services described under (i) of this section and services authorized under 7 AAC 110.210(c) and (d), requires prior authorization by the department.

(d) The recipient's health care provider shall request prior authorization for nonemergency transportation and accommodation services on behalf of the recipient by submitting a request to the department or its designee. If accommodation services are necessary, the provider shall request prior authorization for accommodation services at the same time that the provider requests prior authorization for nonemergency transportation services.

(e) The department will pay for changes to nonemergency transportation services authorized under this section if a recipient is forced to change authorized travel plans for reasons beyond the recipient's control, including the cancellation of an airline flight due to weather conditions or the closing of an airport for security reasons, or if the recipient's provider determines that the recipient must stay longer than previously approved because the medical service for which the recipient traveled reveals the need for additional services, screening, or treatment. The recipient's provider shall notify the department or its designee of the change in the recipient's travel plans immediately upon becoming aware that the change is necessary, but not later than the next business day.

(f) Payment for rescheduled travel that occurs

(1) not later than the month following the originally authorized travel dates does not require a new prior authorization from the department;

(2) later than the month following the originally authorized travel dates requires a new prior authorization from the department.

(g) If a recipient's travel plans change for a reason not described in (e) of this section, the department will not pay to change or rebook a flight unless, before the departure of the flight, the recipient, the recipient's escort, or the recipient's provider notifies the Medicaid travel office that originally arranged the travel.

(h) The department will not pay for the following nonemergency transportation services:

(1) the cost to change or reschedule a flight and the remainder of a cancelled itinerary when a flight is missed for reasons that are within the control of the recipient, including a recipient's failure to

Register 234, July 2020 HEALTH AND SOCIAL SERVICES

(A) arrange for timely transportation to the airport;

(B) arrive at the airport early enough to meet airport, airline, and security check-in requirements;

(C) take an identification card that meets the requirements of the United States Department of Homeland Security, Transportation Security Administration; and

(D) behave in a manner that is consistent with airport, airline, and security requirements;

(2) travel on a charter air service, unless the department, but not a department designee, determines that a delay of travel until a commercial flight is available will be detrimental to the health of the recipient.

(i) A claim submitted to the department for the cost of nonemergency ground and air ambulance transportation service must be accompanied by written medical justification for the service. (Eff. 2/1/2010, Register 193; am 5/1/2016, Register 218; am 9/1/2017, Register 223; am 7 / 1 / 2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 120.425(a) is amended to read:

(a) The department will pay for accommodation services, including food and lodging, that are authorized by the department and incurred by a recipient and the recipient's authorized escort who are required to travel to receive necessary medical care and cannot reasonably return to the recipient's home community on the same day. Food is covered only if

Register 234, July 2020 HEALTH AND SOCIAL SERVICES

the lodging provider that is enrolled under 7 AAC 105 - 7 AAC 160 provides food.

7 AAC 120.425(b) is amended to read:

(b) The department will pay for **lodging** [ACCOMMODATION SERVICES] at an all-inclusive flat rate **and for food up to the maximum daily rate** established by the department.

(Eff. 2/1/2010, Register 193; am 7 / 1 / 2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 120.430 is amended by adding a new subsection to read:

(f) The department may deny approval of an individual to serve as escort if the individual has demonstrated behavior that is not in the best interest of the recipient or if the individual cannot fulfill the responsibilities of an escort. (Eff. 2/1/2010, Register 193; am 6/7/2018, Register 226; am 7 / 1 / 2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

MEMORANDUM

State of Alaska Department of Law

| | |
|---|--|
| To: The Honorable Kevin Meyer Lieutenant Governor | Date: May 1, 2020 |
| | File No.: 2018200907 |
| Thru: Susan R. Pollard <i>SRP</i> Chief Assistant Attorney General and Regulations Attorney Legislation and Regulations Section | Tel. No.: 465-3600 |
| From: Steven C. Weaver <i>SCW</i> Senior Assistant Attorney General Legislation and Regulations Section | Re: Department of Health and Social Services regulations re: Medicaid coverage and payment regulations regarding transportation and accommodation services (7 AAC 120.405 - 7 AAC 120.430) |

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 update procedures and requirements for Medicaid coverage of and payment for transportation and accommodation services.

We note that the adoption order sets a special effective date of July 1, 2020 for these regulations.

The September 4, 2019 public notice and the April 24, 2020 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: Hon. Adam Crum, Commissioner
Department of Health and Social Services

Triptaa Surve, Regulations Contact
Department of Health and Social Services

Renee A. Gayhart, Director
Division of Health Care Services
Department of Health and Social Services

Susan Dunkin
Division of Health Care Services
Department of Health and Social Services

Kelly E. Henriksen, Senior Assistant Attorney General
Human Services Section

NOTICE OF PROPOSED CHANGES ON MEDICAID COVERAGE TRANSPORTATION &
ACCOMMODATION SERVICES IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL
SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on Medicaid coverage for transportation and accommodation services.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with Medicaid coverage for transportation and accommodation services, including the following:

- 7 AAC 120 is proposed to be changed as follows:
 - Clarify reimbursement for meal expenses.
 - Amend department approval language regarding nonemergency transportation when prior authorization and other requirements are met.
 - Add cancellation, missed flight, and rescheduled travel requirements.
 - Clarify accommodation services authorization requirements.
 - Amend travel escort requirements to allow the department to deny approval of an individual to serve as escort in certain circumstances.

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 Ms. Susan Dunkin at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Building L, Attention: Susan Dunkin, Anchorage, AK 99503. Additionally, the Department of Health & Social Services will accept comments by electronic mail at susan.dunkin@alaska.gov. The comments must be received not later than 5 p.m. on October 18, 2019.

You may submit written questions relevant to the proposed action to Ms. Susan Dunkin by e-mail at susan.dunkin@alaska.gov or at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Building L, Attention: Susan Dunkin, 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 and agency website at <http://www.dhss.alaska.gov/dhcs/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 Ms. Susan Dunkin at susan.dunkin@alaska.gov or at (907) 269-3638 not later than October 7, 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 Ms. Susan Dunkin at susan.dunkin@alaska.gov or by telephone at (907) 269-3638.

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 47.05.012; 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: The proposed regulation changes are not expected to require an increased appropriation.

The Department of Health & Social Services, Division of Health Care Services, 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, Division of Health Care Services, notices of proposed regulation changes. To be added to or removed from the list, send a request to the Department of Health & Social Services, Division of Health Care Services at susan.dunkin@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

DATE:

8/29/19



Adam Crum
Commissioner,
Department of Health & Social Services

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ACCOMMODATION SERVICES IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL
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DATE:

8/29/19



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, Transportation & Accommodation Services.
3. Citation of regulation (may be grouped): 7 AAC 120.405, .410, .425, .430.
4. Department of Law file number, if any: 2018200907
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): Program maintenance and in compliance with a stipulated settlement agreement (Active and Giordano vs DHSS, #3DI-09-75CI).
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 FY _____ | Subsequent 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: Ms. Susan Dunkin

Title: Medicaid Program Specialist III

Address: 4501 Business Park Blvd., Bldg. L, Anchorage, AK 99503.

Telephone: (907) 269-3638

E-mail address: susan.dunkin@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency

☐ Federal government

☐ General public

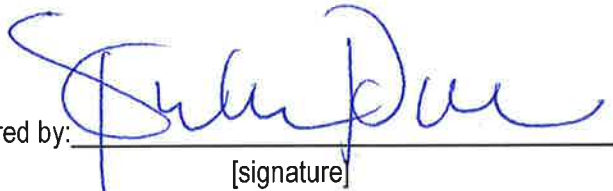
☐ Petition for regulation change⁷

☒ Other (identify): Alaska Superior Court Order in the case of *Active and Giordano vs. DHSS (3DI-09-75CI)*.

11.

Date: 08/22/19

Prepared by:


[signature]

Name (printed): Susan Dunkin

Title (printed): Medicaid Program Specialist III

Telephone: (907) 269-3638

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION


I, Susan Miller Dunkin, Medicaid Program Specialist IV, of Department of Health and Social Services, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 7 AAC 120, Medicaid Coverage, Transportation and Accommodation 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).

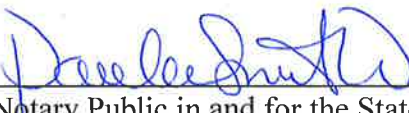
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: November 20, 2019


Susan Miller Dunkin, Medicaid Program Specialist IV

Subscribed and sworn to before me at Anchorage, Alaska
on November 20, 2019

(date)


Notary Public in and for the State of Alaska

[NOTARY SEAL]




AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT


I, Susan Miller Dunkin, Medicaid Program Specialist IV for 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 7 AAC 120, Medicaid Coverage, Transportation and Accommodation Services.

Date: November 20, 2019


Susan Miller Dunkin, Medicaid Program Specialist IV

Subscribed and sworn to before me at Anchorage, Alaska on
November 20, 2019
(date)


Notary Public in and for the State of Alaska

[NOTARY SEAL]



ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270229 ST OF AK/DHSS/COMMISSIONERS

Order #: W0011410

Cost: \$438.26

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

09/04/2019

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



Subscribed and sworn to before me

this 4th day of September 2019.

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 MEDICAID COVERAGE TRANSPORTATION & ACCOMMODATION SERVICES IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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DATE: August 29, 2019.

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

Published: September 4, 2019