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Lieutenant Governor
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Anchorage, Alaska 99501
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Triptaa Surve
Department of Health and Social Services

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: June 16, 2020

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

Department of Health and Social Services regulation re: Medicaid eligibility requirements regarding recipient's payment of cost-of-care liability, and Medicaid coverage and payment regulations regarding third-level review (7 AAC 100.550(a); 7 AAC 100.552; 7 AAC 100.604(c)(6); 7 AAC 105.280(e), (g); 7 AAC 145.005(b); 7 AAC 145.520(i))

Attorney General File:	2019200476
Regulation Filed:	6/16/2020
Effective Date:	8/1/2020
Print:	235, October 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 4 pages of regulations, dealing with Medicaid Cost-of-Care and Third-Level Review, specifically, 7 AAC 100. Medicaid Eligibility; 7 AAC 105. Medicaid Provider and Recipient Participation; and 7 AAC 145. Medicaid Payment Rates, 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 47.07.020, AS 47.07.030, AS 47.07.040, and AS 47.07.042, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

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

The regulation changes adopted under this order take effect on August 1, 2020, as provided in AS 44.62.180.

Adam Crum Digitally signed by Adam Crum
Date: 2020.06.11 08:32:38 -08'00'

Adam Crum, Commissioner
Department of Health & Social Services

FILING CERTIFICATION

April Simpson for

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that¹ on June 16th,

2020, at 9:41 a.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: August 1, 2020.

Register: 235, October 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**

The heading of 7 AAC 100, Article 10, is changed to read:

Article 10. [LONG-TERM CARE MEDICAID] Post Eligibility and Cost of Care.

7 AAC 100.550(a) is amended to read:

(a) After establishing initial Medicaid eligibility, the department will determine if a recipient must pay a portion of the cost of the recipient's long-term care services or home and community-based waiver services. If a recipient or a recipient's representative, on behalf of the recipient, fails to pay the cost-of-care liability for home and community-based waiver services, the department may terminate the recipient's eligibility for home and community-based waiver services.

(Eff. 7/20/2007, Register 183; am 8 / 1 / 2010, Register 235)

Authority: AS 47.05.010 AS 47.07.020 AS 47.07.040

7 AAC 100.552 is repealed and readopted to read:

7 AAC 100.552. Payment of recipient's cost-of-care liability. (a) A provider that is enrolled under 7 AAC 105.200 as a long-term care facility is responsible for collecting the cost-of-care amount determined under 7 AAC 100.554 from a recipient who resides in the long-term care facility or from the recipient's representative, on behalf of the recipient. The department will reduce its payment to the provider by the amount of the recipient's cost of care, even if the recipient or the recipient's representative, on behalf of the recipient, fails to pay the cost-of-care amount to the provider.

(b) The department is responsible for collecting the cost-of-care amount determined

Register 235, October 2020 HEALTH AND SOCIAL SERVICES

under 7 AAC 100.554 from a recipient who is eligible for home and community-based waiver services and who resides in the recipient's own home, with family or friends, or in another non-licensed setting in the community, or from the recipient's representative on behalf of the recipient. The department will not reduce its payment to the provider by the amount of the recipient's cost of care.

(c) A provider that is enrolled under 7 AAC 105.200 as a residential supported-living services provider licensed under AS 47.32 as an assisted living home is responsible for collecting the cost-of-care amount determined under 7 AAC 100.554 from the recipient who is eligible for home and community-based waiver services and who resides in a residential supported-living setting, or from the recipient's representative, on behalf of the recipient. The department will reduce its payment to the provider by the amount of the recipient's cost of care, even if the recipient or the recipient's representative, on behalf of the recipient, fails to pay the cost-of-care amount to the provider. (Eff. 7/20/2007, Register 183; am 1/1/2011, Register 196; am

8 / 1 / 2020, Register 235)

Authority: AS 47.05.010 AS 47.07.020 AS 47.07.040

The section heading of 7 AAC 100.554 is changed to read:

7 AAC 100.554. Cost-of-care liability [;] determination.

7 AAC 100.604(c)(6) is amended to read:

(6) the applicant or recipient has a cost-of-care liability under 7 AAC 100.550 -

Register 235, October 2020 HEALTH AND SOCIAL SERVICES

7 AAC 100.579 [7 AAC 100.550], but the trustee fails to make payments toward the cost-of-care liability;

(Eff. 7/20/2007, Register 183; am 8 / 1 / 2020, Register 235)

Authority: AS 47.05.010 AS 47.07.020 AS 47.07.040

7 AAC 105.280(e) is amended to read:

(e) A [EXCEPT AS PROVIDED IN (g) OF THIS SECTION, A] decision by the department under this section is a final administrative decision, and the department will notify the provider of the provider's right to appeal to the superior court under the Alaska Rules of Appellate Procedure.

7 AAC 105.280(g) is repealed:

(g) Repealed 8 / 1 / 2020.

(Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 8 / 1 / 2020, Register 235)

Authority: AS 44.77.015 AS 47.05.010 AS 47.07.040

7 AAC 145.005(b) is amended to read:

(b) The payment rate established by the department for a given service, less the amount of cost-sharing required under 7 AAC 105.610, constitutes full payment from the department for that service. Except as provided in 7 AAC 110.145, a provider may not charge a recipient or recipient's [,] relative, friend, or representative, any amount to supplement payment by the department for services to which the recipient is entitled under 7 AAC 105 - 7 AAC 160.

Register 235, October 2020 HEALTH AND SOCIAL SERVICES

(Eff. 2/1/2010, Register 193; am 5/1/2016, Register 218; am 8 / 1 / 2020, Register 235)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.042

7 AAC 145.520(i) is repealed and readopted to read:

(i) If a recipient has been determined eligible for Medicaid coverage under 7 AAC 100.002(d)(8), the recipient's income, exclusive of the personal needs allowance and other deductions described in 7 AAC 100.550 - 7 AAC 100.579 is a prior resource for home and community-based waiver services. Once the department has determined the recipient's monthly cost-of-care amount under 7 AAC 100.554, the recipient or the recipient's representative, on behalf of the recipient, shall pay that liability under 7 AAC 100.552. (Eff. 2/1/2010, Register 193; am 3/1/2011, Register 197; am 4/1/2012, Register 201; am 7/1/2013, Register 206; am 1/1/2014, Register 208; am 7/1/2015, Register 214; am 8/18/2015, Register 215; am 10/1/2017, Register 223; am 3/1/2018, Register 225; am 10/1/2018, Register 227; am 7/1/2019, Register 231; am 8 / 1 / 2020, Register 235)

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

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

From: Steven C. Weaver *scw*
Senior Assistant Attorney General
Legislation and Regulations Section

Date: June 12, 2020

File No.: 2019200476

Tel. No.: 465-3600

Re: Department of Health and Social Services regulations re: Medicaid eligibility requirements regarding recipient's payment of cost-of-care liability, and Medicaid coverage and payment regulations regarding third-level review (7 AAC 100.550(a); 7 AAC 100.552; 7 AAC 100.604(c)(6); 7 AAC 105.280(e), (g); 7 AAC 145.005(b); 7 AAC 145.520(i))

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 a recipient's liability for the cost of care for Medicaid services, as the department calculates it under the Medicaid eligibility regulations; and particularly provide that the department, rather than a provider, is responsible for pursuing payment of an unpaid cost-of-care liability if the services consist of home and community-based waiver services. The regulations also amend the Medicaid coverage and payment regulations to repeal the third-level review option related to timely filing of a provider's claim.

The adoption order sets a special effective date of August 1, 2020 for these regulations, so these should have an effective date of August 1, 2020.

The November 10, 2019 public notice and the June 11, 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

Susan Miller 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 COST-OF-CARE AND THIRD-LEVEL REVIEW IN
THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on Medicaid cost-of-care and third-level review.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with Medicaid cost-of-care and third-level review, including the following:

- 7 AAC 100. Medicaid Eligibility; 7 AAC 105. Medicaid Provider and Recipient Participation; and 7 AAC 145. Medicaid Payment Rates, are proposed to be changed as follows:
 - Transfer cost of care collection responsibility for a waiver recipient residing in the community from waiver services providers to the department.
 - Clarify existing language requiring assisted living facilities and skilled nursing facilities to collect monthly costs of care.
 - Remove the 3rd level review option related to timely filing.

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 Miller Dunkin at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Building L, Attention: Susan Miller 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 December 23, 2019.

Oral or written comments also may be submitted at a hearing to be held on December 4, 2019, at the Frontier Building, in conference rooms 880 and 890, 3601 C Street, Anchorage, AK 99503. The hearing will be held from 3:30 p.m. to 4:30 p.m., and might be extended to accommodate those present before 3:30 p.m. who did not have an opportunity to comment. If you are unable to attend in person, but would like to comment during the oral public hearing, you can call the teleconference number 1-800-771-6759 (Toll Free).

You may submit written questions relevant to the proposed action to Ms. Susan Miller 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 Miller 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. Jolene Withers at jolene.withers@alaska.gov or at (907) 334-2446 not later

than December 13, 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 Miller 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 47.07.020; AS 47.07.030; AS 47.07.040; AS 47.07.042.

Statutes being implemented, interpreted, or made specific: AS 47.05.010; AS 47.07.020; AS 47.07.030; AS 47.07.040; AS 47.07.042.

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: November 5, 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 Cost-of-Care & Third-Level Review
3. Citation of regulation (may be grouped): 7 AAC 100, 105, 145.
4. Department of Law file number, if any: 2019200476
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 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 Miller 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 change?
☐ Other (identify): _____

11. Date: 10/21/19

Prepared by:


[signature]

Name (printed): Susan Miller 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, of the Department of Health & Social Services, under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to Medicaid Cost-of-Care and Third-Level Review, specifically, 7 AAC 100. Medicaid Eligibility; 7 AAC 105. Medicaid Provider and Recipient Participation; and 7 AAC 145. Medicaid Payment Rates, 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.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: _____

**Susan Miller
Dunkin**

Digitally signed by Susan Miller
Dunkin
Date: 2020.05.08 11:31:37 -08'00'

[original or password-protected electronic signature]
Susan Miller Dunkin, Medicaid Program Specialist IV

State of Alaska
Anchorage, AK 99503

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270229 ST OF AK/DHSS/COMMISSIONERS
3601 C STREET STE 902, ANCHORAGE, AK 99503

Order #: W0012324

Cost: \$488.08

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa 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 afore-said 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

11/10/2019

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 12th day of November 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 COST-OF-CARE AND THIRD-LEVEL REVIEW IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with Medicaid cost-of-care and third-level review, including the following:

- 7 AAC 100. Medicaid Eligibility; 7 AAC 105. Medicaid Provider and Recipient Participation; and 7 AAC 145. Medicaid Payment Rates, are proposed to be changed as follows:
 - o Transfer cost of care collection responsibility for a waiver recipient residing in the community from waiver services providers to the department.
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Oral or written comments also may be submitted at a hearing to be held on December 4, 2019, at the Frontier Building, in conference rooms 880 and 890, 3601 C Street, Anchorage, AK 99503. The hearing will be held from 3:30 p.m. to 4:30 p.m., and might be extended to accommodate those present before 3:30 p.m. who did not have an opportunity to comment. If you are unable to attend in person, but would like to comment during the oral public hearing, you can call the teleconference number 1-800-771-6759 (Toll Free).

You may submit written questions relevant to the proposed action to Ms. Susan Miller 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 Miller 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. Jolene Withers at jolene.withers@alaska.gov or at (907) 334-2444 not later than December 13, 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 Miller 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 47.07.020; AS 47.07.030; AS 47.07.040; AS 47.07.042.

Statutes being implemented, interpreted, or made specific: AS 47.05.010; AS 47.07.020; AS 47.07.030; AS 47.07.040; AS 47.07.042.

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

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DATE: November 5, 2019.
/s/Adam Crum
Commissioner,
Department of Health & Social Services

Published: November 10, 2019

AFFIDAVIT OF ORAL HEARING

I, Jolene Withers, of the Department of Health & Social Services, under penalty of perjury, state the following:

On December 4, 2019, at 3:30 p.m., in conference rooms 880 and 890, at the Frontier Building, 3601 C Street, Anchorage, AK 99503, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to Medicaid Cost-of-Care and Third-Level Review, specifically, 7 AAC 100. Medicaid Eligibility; 7 AAC 105. Medicaid Provider and Recipient Participation; and 7 AAC 145. Medicaid Payment Rates.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: _____

Jolene Withers

Digitally signed by Jolene
Withers
Date: 2020.05.08 10:53:32 -08'00'

[original or password-protected electronic signature]

Jolene Withers, Program Coordinator

State of Alaska
Anchorage, AK 99503.

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Susan Miller Dunkin, of the Department of Health & Social Services, under penalty of perjury, 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 and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Health & Social Services regulation on Medicaid Cost-of-Care and Third-Level Review, specifically, 7 AAC 100. Medicaid Eligibility; 7 AAC 105. Medicaid Provider and Recipient Participation; and 7 AAC 145. Medicaid Payment Rates.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: _____

**Susan Miller
Dunkin**

Digitally signed by Susan Miller
Dunkin
Date: 2020.05.08 10:49:51 -08'00'

[original or password-protected electronic signature]

Susan Miller Dunkin, Medicaid Program Specialist IV

State of Alaska
Anchorage, AK 99503.