

Kevin Meyer  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
WWW.LTGOV.ALASKA.GOV




530 West 7<sup>th</sup> Ave, Suite 1700  
Anchorage, Alaska 99501  
907.269.7460  
LT.GOVERNOR@ALASKA.GOV

**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:** September 4, 2020

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

Department of Health and Social Services emergency regulations made permanent re:  
Medicaid behavioral health "1115" waiver services (7 AAC 70.030; 7 AAC 136; 7 AAC  
138.040(b); 7 AAC 138.200(a)(1); 7 AAC 138.250(a); 7 AAC 138.450; 7 AAC 139; 7  
AAC 160.900(d))

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Attorney General File:	2020200364
Regulation Filed:	9/4/2020
Effective Date:	5/21/2020 & 10/4/2020
Print:	236, January 2021

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

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

The attached 27 pages of regulations, dealing with Medicaid 1115 Behavioral Health Waiver Services specifically, 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver 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 47.05.012, AS 47.05.270, AS 47.07.030, AS 47.07.036, AS 47.07.040, AS 47.30.470, AS 47.30.475, AS 47.30.477, AS 47.30.530, AS 47.30.540, AS 47.30.570, AS 47.32.010, and AS 47.37.140, 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.

It is estimated that this action will require increased appropriations as shown on the attached fiscal note.

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 May 20, 2020. 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.

**Adam Crum**

Digitally signed by Adam Crum  
Date: 2020.08.31 08:19:30 -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 that on September 4<sup>th</sup>, 2020, at 1:07 p.m., I filed the attached regulation according to the provisions of AS 44.62.

Effective : October 4, 2020.

Register:

236. January 2021

*Kevin Meyer*

\_\_\_\_\_  
Lieutenant Governor Kevin Meyer

CERTIFICATION OF COMPLIANCE

I, Adam Crum, Commissioner, certify that, as required by AS 44.62.260 in order to make the attached 27 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:

Medicaid 1115 Behavioral Health Waiver Services, specifically, 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

This regulation originally was filed as an emergency regulation on May 21, 2020.

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.

**Adam Crum**

Digitally signed by Adam Crum  
Date: 2020.08.31 08:19:08 -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 that on September 4<sup>th</sup>, 2020, at

1:09 p.m., I filed the attached regulation according to the provisions of AS 44.62.

*April Simpson*  
for Lieutenant Governor *Kevin Meyer*

Register: 236, January 2021

**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 emergency amendment of 7 AAC 70.030(a)(4) is made permanent to read:

(4) 1115 waiver services under 7 AAC 136.020;

(Eff. 10/1/2011, Register 199; am 4/9/2017, Register 222; am 7/1/2018, Register 226; am 4/24/2020, Register 234; am 5/21/2020, Register 234)

**Authority:** AS 47.05.010 AS 47.30.477 AS 47.30.570  
AS 47.30.470 AS 47.30.530 AS 47.37.140  
AS 47.30.475 AS 47.30.540

The article heading for 7 AAC 136, Article 1, is deleted:

**Chapter 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115**

**Demonstration Waiver.**

**[ARTICLE**

1. ADMINISTRATION (7 AAC 136.010 - 7 AAC 136.050)

**ARTICLE 1. ADMINISTRATION.]**

**Section**

10. Purpose

20. Provider requirements

**990. Definitions**

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The emergency amendment of 7 AAC 136.010(3) is made permanent to read:

(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*, adopted by reference in 7 AAC 160.900, and according to service criteria established under 7 AAC 138 and 7 AAC 139;

7 AAC 136.010(a)(7) is amended to read:

(7) establish definitions and service criteria for 1115 waiver services [; IN THIS SECTION "1115 WAIVER" HAS THE MEANING GIVEN IN 7 AAC 160.990]. (Eff. 7/1/2019, Register 231; am 5/21/2020, Register 234; am 10/4/2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 136.020(1) is made permanent to read:

(1) obtain department certification as an 1115 waiver services provider and identify the 1115 waiver services the provider will provide before delivering 1115 waiver services if the provider is a community behavioral health services provider;

The emergency amendment of 7 AAC 136.020(3) is made permanent and that paragraph is further amended to read:

(3) comply with the additional requirements listed in the

(A) *Alaska Behavioral Health Provider [PROVIDERS] Service*

*Standards & Administrative Procedures for SUD Provider Services*, adopted by reference

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in 7 AAC 160.900, for substance use disorder treatment [SUD] providers, and including the documentation guidelines for 1115 waiver services; and

(B) *Alaska Behavioral Health Providers Services [SERVICE] Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, for community behavioral health services providers, and including the documentation guidelines for 1115 waiver services. (Eff. 7/1/2019, Register 231; am 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 136 is amended by adding a new section to read:

**7 AAC 136.990. Definitions.** In this chapter, unless the context requires otherwise,

- (1) "1115 waiver" has the meaning given in 7 AAC 160.990(b);
- (2) "community behavioral health services provider" has the meaning given in

7 AAC 70.990;

- (3) "substance use disorder treatment provider" has the meaning given in 7 AAC

70.990. (Eff. 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.040(b) is made permanent and that subsection is further amended to read:

(b) The department will not pay for substance use disorder 1115 waiver services beyond the limits listed in the *Alaska Behavioral Health Provider [PROVIDERS] Service Standards &*

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*Administrative Procedures for SUD Provider Services*, adopted by reference in 7 AAC 160.900, without prior authorization from the department.

(Eff. 7/1/2019, Register 231; am 11/10/2019, Register 232; am 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030

The emergency amendment of 7 AAC 138.200(a)(1) is made permanent and that paragraph is further amended to read:

(1) one of the department-approved screening tools listed in the *Alaska Behavioral Health Provider [PROVIDERS] Service Standards & Administrative Procedures for SUD Provider Services*, adopted by reference in 7 AAC 160.900; and

(Eff. 7/1/2019, Register 231; am 11/10/2019, Register 232; am 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030

The emergency amendment to 7 AAC 138.250(a) is made permanent to read:

(a) The department will pay for the following outpatient substance use disorder treatment services under the 1115 waiver if the service is provided according to this chapter:

- (1) intensive outpatient services;
- (2) partial hospitalization services;
- (3) outpatient services.

(Eff. 7/1/2019, Register 231; am 11/10/2019, Register 232; am 5/21/2020, Register 234)



**Authority:** AS 47.05.010 AS 47.07.030

The emergency adoption of 7 AAC 138.450 in Article 4 is made permanent and that section is further amended to read:

**7 AAC 138.450. Crisis response services.** (a) The following services may be provided to an eligible recipient under this chapter in any appropriate community setting:

(1) peer-based crisis services, provided by a peer support specialist under 7 AAC 138.400, to help an individual avoid the need for hospital emergency department services or the need for psychiatric hospitalization through services identified in a crisis plan by a mental health professional clinician that may include

(A) a summary of crisis intervention needs;

(B) facilitation of transition to other community-based resources or natural supports; and

(C) advocacy for client needs with other service providers;

(2) mobile outreach and crisis response services,

**(A) only if** [MUST BE] provided by

**(i)** a mental health professional clinician; **and**

**(ii) a** [IN CONJUNCTION WITH AT LEAST ONE OTHER]

qualified **behavioral health** professional, as defined in **the** *Alaska Behavioral*

*Health Provider Service Standards &* [PROVIDERS SERVICES AND]

*Administrative Procedures for SUD Provider Services*, adopted by reference in

7 AAC 160.900; **and**

**(B) in order** [,] to

**(i)** [(A)] prevent a substance use disorder or mental health crisis from escalating;

**(ii)** [(B)] stabilize an individual during or after a mental health crisis or crisis involving a substance use disorder; or

**(iii)** [(C)] refer and connect to other appropriate services that may be needed to resolve the crisis;

(3) 23-hour crisis observation and stabilization services, **that are provided for up to 23 hours and 59 minutes in a secure environment** to an individual presenting with acute symptoms of mental or emotional distress [FOR UP TO 23 HOURS AND 59 MINUTES IN A SECURE ENVIRONMENT], **and** that must

(A) be provided by medical staff supervised by a physician, a physician assistant, or an advanced practice registered nurse;

(B) result in prompt evaluation and stabilization of the individual's condition; and

(C) ensure **that** the individual is safe from self-harm, including suicidal behavior.

(b) The crisis residential and stabilization services provided to an eligible individual under this chapter presenting with acute mental or emotional disorders requiring psychiatric stabilization and care may be provided in a licensed general acute care hospital, **a licensed** psychiatric hospital, **a United States** Indian Health Service facility, **a** licensed critical access hospital, a community behavioral health services provider approved by the department under

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7 AAC 136.020, or a **licensed** crisis stabilization center [UNDER AS 47.32.900(22)]. The crisis residential and stabilization services must be provided

(1) as a short-term residential program with 16 or fewer beds;

(2) as a medically monitored stabilization service designed to restore the individual to a level of functioning that does not require inpatient hospitalization; and

(3) to assess the need for medication services and other post-discharge treatment and support services.

(c) A peer support specialist in this section is subject to the qualifications listed in 7 AAC 138.400(a) and (e).

(d) In this section, "short term" means **not** [NO] more than seven days, and may be extended through a service authorization. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 [AS 47.32.010]  
AS 47.05.270 AS 47.07.036

The chapter heading for 7 AAC 139 and the section listing for 7 AAC 139, Article 1, are changed to read:

**Chapter [7 AAC] 139. Behavioral Health 1115 Waiver Services.**

**Article**

1. Scope; Eligibility; Service Provision, Rates, and Authorization (7 AAC 139.010 - 7 AAC 139.040)

2. Medicaid Behavioral Health 1115 Waiver Services (7 AAC 139.100 - 7 AAC 139.400)
3. General Provisions (7 AAC 139.900)

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

**Section**

- 10** [010]. Recipient eligibility
- 20** [020]. Provision of behavioral health 1115 waiver services
- 30** [030]. Provision of Medicaid state plan services
- 40** [040]. Service rates, limits, and authorization

The emergency adoption of 7 AAC 139.010 is made permanent and that section is further amended to read:

**7 AAC 139.010. Recipient eligibility.** The following individuals may receive services under this chapter:

- (1) **an individual under 21 years of age** [A YOUTH UNDER AGE 21] who
  - (A) is diagnosed with a mental, **emotional, or behavioral disorder** [HEALTH] or substance use disorder;
  - (B) is at risk of developing a mental, **emotional, or behavioral disorder** [HEALTH] or substance use disorder based upon a screening conducted under 7 AAC 135.100;
  - (C) is at risk of out-of-home placement;

(D) is currently in the custody of the state; or

(E) has been detained in a juvenile justice facility or treated in a residential treatment program or psychiatric hospital within the past year;

(2) an individual who meets the criteria under 7 AAC 135.055 for an adult experiencing a serious mental illness;

(3) an **individual 21 years of age or older** [ADULT] who is experiencing a mental, **emotional, or behavioral** disorder who meets the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, adopted by reference in 7 AAC 70.910, or the *International Classification of Diseases - 10th Revision, Clinical Modification, (ICD-10-CM)*, adopted by reference in 7 AAC 70.910. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010                      AS 47.07.030                      AS 47.07.036  
AS 47.05.270

The emergency adoption of 7 AAC 139.020 is made permanent and that section is further amended to read:

**7 AAC 139.020. Provision of behavioral health 1115 waiver services.** The department will pay for behavioral health 1115 waiver services if the

- (1) recipient is eligible under 7 AAC 139.010;
- (2) provider meets the requirements in 7 AAC 136.020;
- (3) services are provided under this chapter; and
- (4) services are based upon an assessment conducted under 7 AAC 135.110,

except for

**(A) individuals** [YOUTH] described in 7 AAC 139.150(a)(1); **and**

**(B) individuals described in 7 AAC 139.350(a)(1)**. (Eff. 5/21/2020,

Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036

AS 47.05.270

The emergency adoption of 7 AAC 139.030 is made permanent and that section is further amended to read:

**7 AAC 139.030. 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 individual even if the individual is also receiving services under this chapter.

(b) A provider may only provide a behavioral health [CLINIC SERVICE LISTED IN 7 AAC 135.010(b) AND A] rehabilitation service listed in 7 AAC 135.010(c) concurrently with services under this chapter if the provider first obtains **prior** authorization from the department for a service listed in **7 AAC 135.010(b) or (c)** [7 AAC 135.010(b) OR 7 AAC 135.010(c)].

(c) A provider may conduct an assessment **and a screening** under 7 AAC 135.110 for an eligible individual under this chapter without prior authorization from the department.

7 AAC 139.030 is amended by adding new subsections to read:

(d) A provider may provide a short-term crisis intervention service listed in 7 AAC

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135.160 or a short-term crisis stabilization service under 7 AAC 135.170 for an eligible individual under this chapter without prior authorization.

(e) A provider may conduct a screening and brief intervention service under 7 AAC 135.240 for an eligible individual under this chapter without prior authorization from the department. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.040  
AS 47.05.270 AS 47.07.036

The emergency adoption of 7 AAC 139.030 is made permanent and that section is further amended to read:

**7 AAC 139.040. Service rates, limits, and authorization.** (a) The behavioral health 1115 waiver services rates **are found** 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 a behavioral health 1115 waiver service beyond the limits listed in **the** *Alaska Behavioral Health Providers Services [SERVICE] Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, without prior authorization from the department.

(c) A provider of behavioral health 1115 waiver services must file a request for prior authorization of an extension for a behavioral health 1115 waiver service beyond service limits under (b) of this section using a form approved by the department. The request must

- (1) be documented in the clinical record;
- (2) include the expected duration of the service; and

(3) include an explanation for the need to extend the service.

(d) **Except as provided in (b) of this section, a** [A] provider that meets the requirements of 7 AAC 136.020 may provide any behavioral health 1115 waiver service without prior authorization from the department.

(e) The department may review a provider's clinical record to confirm the need for an extension of a behavioral health 1115 waiver service. (Eff. 5/21/2020, Register 234; am 10/4/2020, Register 236)

**Authority:** AS 47.05.010                      AS 47.07.030                      AS 47.07.036  
AS 47.05.270

## **Article 2. Medicaid Behavioral Health 1115 Waiver Services.**

### **Section**

- 100. Assessment and treatment plan services
- 150. Home-based family treatment services
- 200. Community-based care management services
- 250. Structured treatment services
- 300. Behavioral health residential treatment services **for adults**
- 325. Behavioral health residential services for children**
- 350. Crisis response services
- 400. Therapeutic treatment **home** [HOMES] services



The emergency adoption of 7 AAC 139.100 is made permanent to read:

**7 AAC 139.100. Assessment and treatment plan services.** The department will pay a provider to

- (1) conduct an assessment according to 7 AAC 135.110 for each recipient receiving services under this chapter;
- (2) develop an initial treatment plan for each recipient under 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. (Eff. 5/21/2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030

The emergency adoption of 7 AAC 139.150 is made permanent and that section is further amended to read:

**7 AAC 139.150. Home-based family treatment services.** (a) The department will pay for home-based family treatment services according to the following criteria to prevent inpatient hospitalization and residential services for **an individual under 21 years of age** [A YOUTH] listed in 7 AAC 139.010(1) if a combination of less intensive outpatient services under 7 AAC 135 has not been effective or is **determined** [DEEMED] likely to not be effective:

- (1) level 1: for **an individual** [A YOUTH] at risk of out-of-home placement or diagnosed with or at risk to develop a mental, **emotional, or behavioral disorder** [HEALTH] or substance use disorder as determined by a screening conducted under 7 AAC 135.100;

(2) level 2: for **an individual** [A YOUTH] at high risk of out-of-home placement;

(3) level 3: for **an individual** [A YOUTH] who is at imminent risk of out-of-home placement or who has been discharged from **a** residential **treatment program**, [OR] psychiatric hospital, [TREATMENT] or [FROM A] juvenile detention facility.

(b) A provider may only provide level 1 home-based family treatment services if the screening is conducted under 7 AAC 135.100 using a screening tool listed in **the Alaska Behavioral Health Provider Services Standards &** [AND] **Administrative Procedures for Behavioral Health Provider Services**, adopted by reference in 7 AAC 160.900, that is designed to identify recipient problems with one or more social determinants of health.

(c) A provider must provide level 1 home-based family treatment services according to a family services plan developed by the provider in collaboration with the family.

(d) A provider may only provide level 2 and level 3 home-based family treatment services if the assessment is conducted under 7 AAC 139.100 and also addresses how family relationships and family dynamics affect the recipient's identified problems.

(e) All levels of home-based family treatment services must include direct access to the component services described in **the Alaska Behavioral Health Providers Services** [PROVIDER] **Standards & Administrative Procedures for Behavioral Health Provider Services**, adopted by reference in 7 AAC 160.900. A provider that cannot provide one or more of the component services under this subsection must arrange for another provider to provide those services.

(f) In this section,

(1) "high risk" means a person with a score of four or more on the *Adverse*

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*Childhood Experiences Questionnaires*, adopted by reference in 7 AAC 160.900; [AND]

(2) "imminent risk" means a person who has been in contact with the office [DIVISION] in the department responsible for children's services [CHILD PROTECTION] regarding issues that could lead to out-of-home placement. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

The emergency adoption of 7 AAC 139.200 is made permanent and that section is further amended to read:

**7 AAC 139.200. Community-based care management services.** (a) The following community-based care management services may be provided to any eligible recipient under this chapter:

(1) intensive case management services, that must be provided according to the criteria listed in 7 AAC 138.400(a)(3);

(2) community recovery support services, that must be provided according to the criteria listed in 7 AAC 138.400(a)(1).

(b) **If community-based care management services consist of** [THE] assertive community treatment services, **those services** may be provided to an individual listed in 7 AAC 139.010(2) who meets admission criteria **set out** [DEFINED] in the *Alaska Behavioral Health Providers Services* [PROVIDER] *Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, and whose needs have not otherwise

been adequately met through behavioral health services offered under 7 AAC 135. Assertive [THE ASSERTIVE] community treatment services must be

- (1) available 24 hours [24-HOURS] a day, seven days a week, according to recipient need;
- (2) provided according to the evidence-based practice criteria established for assertive community treatment, as documented in the *Alaska Behavioral Health Providers Services* [PROVIDER] *Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900; and
- (3) provided in accordance with the component services set out [OUTLINED] in the *Alaska Behavioral Health Providers Services* [SERVICE] *Standards &* [AND] *Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900.

7 AAC 139.200 is amended by adding a new subsection to read:

(c) Notwithstanding (b) of this section, an individual may receive assertive community treatment services, without being an adult experiencing a serious mental illness as required under 7 AAC 139.010(2), if

- (1) the individual is 18 years of age or older but under 21 years of age; and
- (2) the department determines that the individual is eligible for the services under 7 AAC 100 and 7 AAC 110.200 - 7 AAC 110.210 (EPSDT services). (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036

The emergency adoption of 7 AAC 139.250 is made permanent and that section is further repealed and readopted to read:

**7 AAC 139.250. Structured treatment services.** Structured treatment services under this section may be provided to a recipient listed in 7 AAC 139.010 if the services are provided according to the following criteria:

(1) partial hospitalization program services provided to treat a recipient's assessed psychiatric disorder to prevent relapse or the need for higher level of hospitalized care; partial hospitalization program services must

(A) be provided in a therapeutic environment that maintains daily scheduled treatment activities by providers qualified to treat individuals with significant mental health and co-occurring disorders;

(B) include direct access to psychiatric and medical consultation and treatment, including medication services; and

(C) provide the range of component services identified for partial hospitalization program services in the *Alaska Behavioral Health Providers Services Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900;

(2) intensive outpatient services provided to a recipient experiencing significant functional impairment that interferes with the individual's ability to participate in one or more life domains, including home, work, school, and community; intensive outpatient services must

(A) be provided as a therapeutic outpatient program that maintains daily scheduled treatment activities; and

(B) provide the range of component services identified for intensive outpatient services in the *Alaska Behavioral Health Providers Services Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 234)

**Authority:** AS 47.05.010                      AS 47.07.030                      AS 47.07.036  
AS 47.05.270

The emergency adoption of 7 AAC 139.300 is made permanent and that section is further amended to read:

**7 AAC 139.300. Behavioral health residential treatment services for adults.** (a) **Behavioral** [THE ADULT BEHAVIORAL] health residential treatment services **in this section** must be provided in a facility **that is** approved by the department [,] and **that maintains** [MAINTAIN] a therapeutically structured and supervised environment according to the criteria listed in **the Alaska Behavioral Health Providers Services** [SERVICE] **Standards &** [AND] **Administrative Procedures for Behavioral Health Provider Services**, adopted by reference in 7 AAC 160.900.

(b) **Behavioral** [THE ADULT BEHAVIORAL] health residential treatment services **for adults** must be provided in a facility with 16 or fewer beds by an interdisciplinary treatment team for an individual under 7 AAC 139.010(2) according to the following criteria:

(1) level 1: for an **individual**

(A) [ADULT] diagnosed with a mental, **emotional, or behavioral disorder** [HEALTH] or co-occurring mental, **emotional, or behavioral disorder** [HEALTH] and substance use disorder; **and**

(B) with a prior history of continuous high service needs;

(2) level 2: for an **individual** [ADULT] diagnosed with a mental, **emotional, or behavioral disorder** [HEALTH] or substance use disorder who presents with behaviors or symptoms that require a level of care, supervision, or monitoring that is higher than that required for other adult residents in assisted living home care according to AS 47.33 and 7 AAC 75, and who **has** [HAVE]

(A) not responded to outpatient treatment; and

(B) a history of treatment needs for chronic mental, **emotional, or behavioral disorders** [HEALTH] or substance use disorders that cannot be met in a less restrictive setting.

(c) A psychiatric assessment must be conducted for an **individual** [ADULT] receiving behavioral health residential treatment services **for adults** before the department will approve a provider request for a service authorization to exceed one year.

(d) In this section, "high service needs" means using **or having had, in the past calendar year,** [THE SAME OR A COMBINATION OF] three or more of the following **services or occurrences, in any combination** [IN THE PAST CALENDAR YEAR]:

**(1)** acute psychiatric hospitalization;

**(2)** [,] psychiatric emergency services; [,] or

(3) involvement with the criminal justice system.

7 AAC 139.300 is amended by adding a new subsection to read:

(e) Notwithstanding (b) of this section, an individual may receive behavioral health residential treatment services for adults, without being an adult experiencing a serious mental illness as required under 7 AAC 139.010(2), if

(1) the individual is 18 years of age or older but under 21 years of age; and

(2) the department determines that the individual is eligible for the services under

7 AAC 100 and 7 AAC 110.200 - 7 AAC 110.210 (EPSDT services). (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010            AS 47.07.030            AS 47.07.036  
AS 47.05.270

7 AAC 139 is amended by adding a new section to read:

**7 AAC 139.325. Behavioral health residential treatment services for children. (a)**

Behavioral health residential treatment services in this section must be provided in a facility approved by the department and that maintains a therapeutically structured and supervised environment according to the criteria listed in the *Alaska Behavioral Health Providers Services Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900.

(b) Behavioral residential treatment services for children must be provided by an interdisciplinary treatment team for an individual under 7 AAC 139.010(1) according to the



following criteria:

(1) level 1: for children and adolescents in need of stabilization and assessment who do not require the intensive services of medical personnel and who have

(A) not responded to outpatient treatment; and

(B) treatment needs that cannot be met in a less restrictive setting;

(2) level 2: for children and adolescents who have had more than three placements in a less structured treatment facility in one calendar year and who have

(A) not responded to a less intensive level of care;

(B) treatment needs that cannot be met in a less restrictive setting; or

(C) completed a higher level of care and require a step-down level of care

before returning to a community setting. (Eff. 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010            AS 47.07.030            AS 47.07.036  
AS 47.05.270

The emergency adoption of 7 AAC 139.350 is made permanent and that section is further amended to read:

**7 AAC 139.350. Crisis response services.** (a) The following services may be provided to an eligible recipient under this chapter, **as set out in the *Alaska Behavioral Health Providers Services Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900,** in any appropriate community setting:

(1) peer-based crisis services, provided by a peer support specialist under 7 AAC 138.400, to help an individual avoid the need for hospital emergency department services or the

need for psychiatric hospitalization through

(A) a summary of crisis intervention needs;

(B) facilitation of transition to other community-based resources or natural supports; and

(C) advocacy for client needs with other service providers;

(2) mobile outreach and crisis response services,

(A) only if [MUST BE] provided by

(i) a mental health professional clinician; and

(ii) a [IN CONJUNCTION WITH AT LEAST ONE OTHER]

qualified behavioral health professional, as defined in *Alaska Behavioral Health Providers Services* [SERVICE] *Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900;

and

(B) in order [,] to

(i) [(A)] prevent a substance use disorder or mental health crisis from escalating;

(ii) [(B)] stabilize an individual during or after a mental health crisis or crisis involving a substance use disorder [CRISIS]; or

(iii) [AND (C)] refer and connect to other appropriate services that may be needed to resolve the crisis;

(3) 23-hour crisis observation and stabilization services, that are provided for up

to 23 hours and 59 minutes in a secure environment to an individual presenting with acute

symptoms of mental or emotional distress [FOR UP TO 23 HOURS AND 59 MINUTES IN A SECURE ENVIRONMENT], **and** that must

(A) be provided by medical staff supervised by a physician, a physician assistant, or an advanced practice registered nurse;

(B) result in prompt evaluation and stabilization of the individual's condition; and

(C) ensure **that** the individual is safe from self-harm, including suicidal behavior.

(b) The crisis residential and stabilization services provided to an eligible individual presenting with acute mental or emotional disorders requiring psychiatric stabilization and care may be provided in a licensed general acute care hospital, **a licensed** psychiatric hospital, **a United States** Indian Health Service facility, **a** licensed critical access hospital, [BY] a community behavioral health services provider approved by the department under 7 AAC 136.020, or a **licensed** crisis stabilization center [UNDER AS 47.32.900(22)]. The crisis residential and stabilization services must be provided

(1) as a short-term residential program with 16 or fewer beds;

(2) as a medically monitored stabilization service designed to restore the individual to a level of functioning that does not require inpatient hospitalization; and

(3) to assess the need for medication services and other post-discharge treatment and support services.

(c) A peer support specialist in this section is subject to the qualifications listed in 7 AAC 138.400(a) and (e).

(d) In this section, "short term" means **not** [NO] more than seven days, and may be extended through a service authorization. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

The emergency adoption of 7 AAC 139.400 is made permanent and that section is further amended to read:

**7 AAC 139.400. Therapeutic treatment home [HOMES] services.** The department will pay for therapeutic treatment home services that are provided to an eligible **child or adolescent** [YOUTH] under 7 AAC 139.010(1), who experiences severe mental, emotional, or behavioral health needs that cannot be stabilized in a less intensive home setting. **Therapeutic treatment home services** [AND THAT] must

(1) be provided in a licensed foster home under 7 AAC 50 by at least one licensed foster parent;

(2) include trauma-informed care by licensed foster parents and other providers listed in **the** *Alaska Behavioral Health Providers Services* [SERVICE] *Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, who have received documented training or education in principles of **trauma-informed** [TRAUMA INFORMED] care;

(3) include the component services for therapeutic treatment homes listed in **the** *Alaska Behavioral Health Providers Services* [SERVICE] *Standards & Administrative*

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*Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900;  
and

(4) be provided under the direction and supervision of a community behavioral health services provider approved under 7 AAC 136.020. (Eff. 5/21/2020, Register 234; am 10 / 4 / 2020, Register 236)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

### **Article 3. General Provisions.**

#### **Section**

#### **900. Transition to behavioral health 1115 waiver services**

The emergency adoption of 7 AAC 139.900 is made permanent to read:

**7 AAC 139.900. Transition to behavioral health 1115 waiver services.** (a) A provider may only provide the 1115 waiver services listed in this chapter upon approval by the department under 7 AAC 136.020.

(b) A provider must update a recipient treatment plan under 7 AAC 135.130 before providing a new service listed in this chapter for a recipient who is currently receiving services under 7 AAC 70 and 7 AAC 135. (Eff. 5/21/2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

The emergency repeal of 7 AAC 160.900(d)(63) is made permanent to read:

(63) repealed 5/21/2020;

The emergency amendment of 7 AAC 160.900(d)(65) is made permanent and that paragraph is further amended to read:

(65) *Chart of 1115 Medicaid Waiver Services*, dated August 4 [MAY 27], 2020;

The emergency amendment of 7 AAC 160.900(d) to add new paragraphs is made permanent and those paragraphs are further amended to read:

(66) the *Adverse Childhood Experiences Questionnaires*, dated May 27, 2020; [.]

(67) the *Alaska Behavioral Health Provider [PROVIDERS] Service Standards & Administrative Procedures for SUD Provider Services*, dated August 4 [MAY 27], 2020;

(68) the *Alaska Behavioral Health Providers Services [SERVICE] Standards & Administrative Procedures for Behavioral Health Provider Services*, dated August 4 [MAY 27], 2020; [.]

7 AAC 160.900(d) is amended by adding a new paragraph to read:

(69) *Psychiatric Residential Treatment Facility Rates In-State Interim Medicaid Rates*, dated August 4, 2020.

(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

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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 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 6/2/2019, Register 230; am 6/13/2019, Register 230; am 7/1/2019, Register 231; am 10/25/2019, Register 232; am 11/10/2019, Register 232; am 4/24/2020, Register 234; am 5/21/2020, Register 234; am 6/25/2020, Register 234; am 10/1/2020, Register 235; am 10 / 4 / 2020, Register 236 )

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.040

AS 47.05.012

# MEMORANDUM

## State of Alaska Department of Law

**To:** The Honorable Kevin Meyer  
Lieutenant Governor

**Date:** September 2, 2020

**File No.:** 2020200364

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

**Tel. No.:** 465-3600

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

**Re:** Department of Health and Social  
Services emergency regulations made  
permanent re: Medicaid behavioral  
health "1115" waiver services  
(7 AAC 70.030; 7 AAC 136; 7 AAC  
138.040(b); 7 AAC 138.200(a)(1);  
7 AAC 138.250(a); 7 AAC 138.450;  
7 AAC 139; 7 AAC 160.900(d))

The Department of Law has reviewed, against the statutory standards of the Administrative Procedure Act, the attached emergency regulations that the Department of Health and Social Services intends to make permanent with further amendments. Based upon our review, we find no legal problems. The emergency regulations were adopted on May 20, 2020, and were filed and took effect on May 21, 2020. The emergency regulations will expire on September 17, 2020 unless made permanent.

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 emergency regulations were approved by the Department of Health and Social Services, after the close of the public comment period, as permanent regulations with further permanent amendments. The regulations comprehensively address Medicaid behavioral health services available as "section 1115" demonstration waiver services under 42 U.S.C. 1315(a). In particular, the regulations increase the availability of crisis and other emergency psychiatric, substance use disorder, and behavioral health services, and increase the agility of the department and overtaxed providers in providing those services, particularly given the additional strain on the state's behavioral health treatment infrastructure during the COVID-19 pandemic.

The May 20, 2020 adoption order for the emergency regulations, the May 22, 2020 public notice, the May 24, 2020 supplemental public notice, and the August 31, 2020 adoption order all state that this action is expected to require increased appropriations. Therefore, a fiscal



note under AS 44.62.195 has been prepared and is attached.

SCW

cc w/enc: Hon. Adam Crum, Commissioner  
Department of Health and Social Services

Triptaa Surve, Regulations Contact  
Department of Health and Social Services

Farina Brown, Deputy Director  
Division of Behavioral Health  
Department of Health and Social Services

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

NOTICE OF ADOPTION OF EMERGENCY REGULATION ON MEDICAID 1115 BEHAVIORAL HEALTH 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 1115 behavioral health waiver services.

On May 20, 2020, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid 1115 behavioral health waiver services, including the following:

- 7 AAC is proposed to be changed as follows:
  - Amend 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 160.900. Medicaid, Gen. Provisions.
  - Add a new section, 7 AAC 138.450. Crisis response services.
  - Add a new chapter, 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

The emergency regulation takes effect on May 27, 2020, and will expire September 23, 2020. 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 Ms. Alysa Wooden, 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 [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov). The comments must be received not later than 5 p.m. on July 7, 2020.

You may provide oral comments relevant to the proposed action **via telephone** at the hearing to be held on June 18, 2020, 1 p.m. – 4 p.m., **by calling 1-800-315-6338, and using the participant access code number #59481. Please note that in-person attendance will not be permitted at the hearing site because of the public health and safety concerns associated with the COVID-19 pandemic. Please prepare to share your oral comments by telephone only.** If you call to provide oral testimony, you should be on the line **before** the hearing begins at 1 p.m. The Department of Health & Social Services will give priority to those who call in before 3:30 p.m. The Department of Health & Social Services may, before the hearing begins, limit the time allotted for each person providing oral testimony. The time limit may be necessary to conclude the hearing in the time provided.

You may submit written questions relevant to the proposed action to Ms. Alysa Wooden, by electronic mail at [alysa.wooden@alaska.gov](mailto:alysa.wooden@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.

If you are a person with a disability who needs a special accommodation in order to participate in this

process, please contact Ms. Alysa Wooden at (907) 269-2051 not later than June 12, 2020, 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 Ms. Alysa Wooden at [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov) or at (907) 269-2051.

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 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 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

**Statutes being implemented, interpreted, or made specific:** AS 47.05.010; AS 47.05.012; AS 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

**Fiscal information:** It is estimated that the regulations will require increased appropriations as follows (in thousands of dollars): FY2021= \$124; FY2022= \$954; FY2023= \$1,766.

DATE: May 20, 2020.

/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 1115 Behavioral Health Waiver Services
3. Citation of regulation (may be grouped): 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.
4. Department of Law file number, if any: 2020200364

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: 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):

	Initial Year FY2021	Subsequent Years FY2022	FY2023
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: Farina Brown  
Title: Deputy Director

Address: 3601 C St., Suite 878, Anchorage, AK 99503

Telephone: (907) 269-5948

E-mail address: farina.brown@alaska.gov

10. The origin of the proposed action:

- Staff of state agency  
 Federal government  
 General public  
 Petition for regulation change<sup>7</sup>  
 Other (identify): \_\_\_\_\_

11. Date: May 20, 2020.

Prepared by: **Farina Brown** Digitally signed by Farina Brown  
Date: 2020.05.20 06:51:56 -08'00'

[signature]

Name (printed): Farina Brown

Title (printed): Deputy Director

Telephone: (907) 269-5948

**FISCAL NOTE**

Agency: Department of Health & Social Services.

Appropriation/Allocation: Medicaid/Medicaid Services

General subject of regulation: Medicaid 1115 Behavioral Health Waiver Services

Citation of regulation: 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

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

**Expenditures/Revenues**

	FY __	(Thousands of Dollars)		
	Appropriation Requested			
<b>OPERATING EXPENDITURES</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	
Personal Services				
Travel				
Services				
Commodities				
Capital Outlay				
Grants & Benefits	\$124.	\$959.		\$1,771.
Miscellaneous				
<b>TOTAL OPERATING</b>	<b>\$124.</b>	<b>\$959.</b>		<b>\$1,771.</b>

<b>FUNDING SOURCE</b>		(Thousands of Dollars)		
1002	Federal Receipts	\$109.1	\$842.	\$1,556.5
1003	GF Match	\$14.9	\$117.	\$214.5
1004	General Fund			
1005	GF/Program (DGF)			
1007	I/A Rcpts (Other)			
1037	GF/MH (UGF)			

<b>POSITIONS</b>			
Full-time			
Part-time			
Temporary			

<b>CHANGE IN REVENUES</b>			

Date & Prepared by: \_\_\_\_\_

Farina Brown  
 Deputy Director  
 Division of Behavioral Health/Department of Health & Social Services  
 Telephone Number: (907) 269-5948

Digitally signed by Farina Brown  
 Date: 2020.08.06 07:47:17 -08'00'

SUPPLEMENTAL NOTICE OF ADOPTION OF EMERGENCY REGULATION ON MEDICAID 1115  
BEHAVIORAL HEALTH 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 1115 behavioral health waiver services.

On May 20, 2020, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid 1115 behavioral health waiver services, including the following:

- 7 AAC is proposed to be changed as follows:
  - Amend 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 160.900. Medicaid, Gen. Provisions.
  - Add a new section, 7 AAC 138.450. Crisis response services.
  - Add a new chapter, 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF ADOPTION OF EMERGENCY REGULATION that was issued on May 20, 2020, concerning the emergency regulations contained in the Department of Law file number 2020200364. This SUPPLEMENTAL NOTICE is being issued by the Department of Health & Social Services to correct the effective date and expiration date. The emergency regulation takes effect on May 21, 2020, and will expire September 17, 2020. 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 Ms. Alysa Wooden, 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 [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov). The comments must be received not later than 5 p.m. on July 7, 2020.

You may provide oral comments relevant to the proposed action **via telephone** at the hearing to be held on June 18, 2020, 1 p.m. – 4 p.m., **by calling 1-800-315-6338, and using the participant access code number #59481. Please note that in-person attendance will not be permitted at the hearing site because of the public health and safety concerns associated with the COVID – 19 pandemic. Please prepare to share your oral comments by telephone only.** If you call to provide oral testimony, you should be on the line **before** the hearing begins at 1 p.m. The Department of Health & Social Services will give priority to those who call in before 3:30 p.m. The Department of Health & Social Services may, before the hearing begins, limit the time allotted for each person providing oral testimony. The time limit may be necessary to conclude the hearing in the time provided.

You may submit written questions relevant to the proposed action to Ms. Alysa Wooden, by electronic mail at [alysa.wooden@alaska.gov](mailto:alysa.wooden@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.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Ms. Alysa Wooden at (907) 269-2051 not later than June 12, 2020, 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 Ms. Alysa Wooden at [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov) or at (907) 269-2051.

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 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 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

**Statutes being implemented, interpreted, or made specific:** AS 47.05.010; AS 47.05.012; AS 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

**Fiscal information:** It is estimated that the regulations will require increased appropriations as follows (in thousands of dollars): FY2021= \$124; FY2022= \$954; FY2023= \$1,766.

DATE: May 21, 2020.

/s/Adam Crum

Commissioner,

Department of Health & Social Services.



AFFIDAVIT OF NOTICE OF ADOPTION OF EMERGENCY REGULATION  
AND FURNISHING OF ADDITIONAL INFORMATION

I, Farina Brown, Deputy Director, of the Department of Health & Social Services, under penalty of perjury, certify the following:

As required by AS 44.62.250, notice of the May 21, 2020, emergency changes to Medicaid 1115 Behavioral Health Waiver Services, specifically, 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services, has been given under AS 44.62.190(a) 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 May 21, 2020, emergency changes to the regulation described above has been furnished to interested persons and furnished to 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.

**Farina Brown**

Digitally signed by Farina Brown  
Date: 2020.07.28 13:24:40  
-08'00'

[original or password-protected electronic signature]

Farina Brown, Deputy Director

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 #: W0015482

Cost: \$498.04

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 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

05/22/2020

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 30th day of May 2020.

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 ADOPTION OF EMERGENCY REGULATION ON MEDICAID 1115 BEHAVIORAL HEALTH WAIVER SERVICES OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

On May 20, 2020, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid 1115 behavioral health waiver services, including the following:

- \* 7 AAC is proposed to be changed as follows:
  - o Amend 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 160.900. Medicaid, Gen. Provisions.
  - o Add a new section, 7 AAC 138.450. Crisis response services.
  - o Add a new chapter, 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

The emergency regulation takes effect on May 27, 2020, and will expire September 23, 2020. 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 Ms. Alysa Wooden, 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 [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov). The comments must be received not later than 5 p.m. on July 7, 2020.

You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on June 18, 2020, 1 p.m. - 4 p.m., by calling 1-800-315-6338, and using the participant access code number #59481. Please note that in-person attendance will not be permitted at the hearing site because of the public health and safety concerns associated with the COVID - 19 pandemic. Please prepare to share your oral comments by telephone only. If you call to provide oral testimony, you should be on the line before the hearing begins at 1 p.m. The Department of Health & Social Services will give priority to those who call in before 3:30 p.m. The Department of Health & Social Services may, before the hearing begins, limit the time allotted for each person providing oral testimony. The time limit may be necessary to conclude the hearing in the time provided.

You may submit written questions relevant to the proposed action to Ms. Alysa Wooden, by electronic mail at [alysa.wooden@alaska.gov](mailto:alysa.wooden@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.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Ms. Alysa Wooden at (907) 269-2051 not later than June 12, 2020, 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 Ms. Alysa Wooden at [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov) or at (907) 269-2051.

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 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 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

**Statutes being implemented, interpreted, or made specific:** AS 47.05.010; AS 47.05.012; AS 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

**Fiscal Information:** It is estimated that the regulations will require increased appropriations as follows (in thousands of dollars): FY2021= \$124; FY2022= \$954; FY2023= \$1,766.

DATE: May 20, 2020  
/s/Adam Crum  
Commissioner  
Department of Health & Social Services

Published: May 22, 2020

# ANCHORAGE DAILY NEWS

## AFFIDAVIT OF PUBLICATION

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

Order #: W0015482

Cost: \$498.04

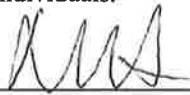
STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

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

05/22/2020

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 30th day of May 2020.

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

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You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on June 18, 2020, 1 p.m. – 4 p.m., by calling 1-800-315-6338, and using the participant access code number #59481. Please note that in-person attendance will not be permitted at the hearing site because of the public health and safety concerns associated with the COVID – 19 pandemic. Please prepare to share your oral comments by telephone only. If you call to provide oral testimony, you should be on the line before the hearing begins at 1 p.m. The Department of Health & Social Services will give priority to those who call in before 3:30 p.m. The Department of Health & Social Services may, before the hearing begins, limit the time allotted for each person providing oral testimony. The time limit may be necessary to conclude the hearing in the time provided.

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**Statutory authority:** AS 47.05.010; AS 47.05.012; AS 47.05.270; AS 47.07.030; AS 47.07.036; AS 47.07.040; AS 47.30.470; AS 47.30.475; AS 47.30.477; AS 47.30.530; AS 47.30.540; AS 47.30.570; AS 47.32.010; AS 47.37.140.

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**Fiscal information:** It is estimated that the regulations will require increased appropriations as follows (in thousands of dollars): FY2021= \$124; FY2022= \$954; FY2023= \$1,766.

DATE: May 20, 2020  
/s/Adam Crum  
Commissioner,  
Department of Health & Social Services

Published: May 22, 2020



# ANCHORAGE DAILY NEWS

## AFFIDAVIT OF PUBLICATION

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

Order #: W0015585

Cost: \$532.9

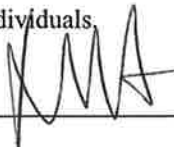
STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

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 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

05/24/2020

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 28th day of May 2020.

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

### SUPPLEMENTAL NOTICE OF ADOPTION OF EMERGENCY REGULATION ON MEDICAID 1115 BEHAVIORAL HEALTH WAIVER SERVICES OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

On May 20, 2020, the Department of Health & Social Services adopted, as an emergency regulation, changes in Title 7 of the Alaska Administrative Code dealing with Medicaid 1115 behavioral health waiver services, including the following:

- \* 7 AAC is proposed to be changed as follows:
  - o Amend 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 160.900. Medicaid, Gen. Provisions.
  - o Add a new section, 7 AAC 138.450. Crisis response services.
  - o Add a new chapter, 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF ADOPTION OF EMERGENCY REGULATION that was issued on May 20, 2020, concerning the emergency regulations contained in the Department of Law file number 2020200364. This SUPPLEMENTAL NOTICE is being issued by the Department of Health & Social Services to correct the effective date and expiration date. The emergency regulation takes effect on May 21, 2020, and will expire September 17, 2020. 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 Ms. Alysa Wooden, 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 [alysa.wooden@alaska.gov](mailto:alysa.wooden@alaska.gov). The comments must be received not later than 5 p.m. on July 7, 2020.

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**Fiscal information:** It is estimated that the regulations will require increased appropriations as follows (in thousands of dollars): FY2021= \$124; FY2022= \$954; FY2023= \$1,766.

DATE: May 21, 2020.  
/s/Adam Crum  
Commissioner,  
Department of Health & Social Services.

Published: May 24, 2020

AFFIDAVIT OF ORAL HEARING

I, Alysa Wooden, Program Coordinator II, of the Department of Health & Social Services, under penalty of perjury, state the following:

On June 18, 2020, at 1 p.m., via teleconference and without in-person attendance because of the public health and safety concerns related to the COVID-19 pandemic, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of emergency changes to Medicaid 1115 Behavioral Health Waiver Services, specifically, 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

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.

**Alysa  
Wooden**

Digitally signed by  
Alysa Wooden  
Date: 2020.07.24  
13:27:04 -08'00'

[original or password-protected electronic signature]

Alysa Wooden, Program Coordinator II

State of Alaska  
Anchorage, AK 99503.

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Farina Brown, Deputy Director, 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 1115 Behavioral Health Waiver Services, specifically, 7 AAC 70. Behavioral Health Services; 7 AAC 136. Alaska Substance Use Disorder and Behavioral Health Program: 1115 Demonstration Waiver; 7 AAC 138. 1115 Substance Use Disorder Waiver Services; 7 AAC 139. Behavioral Health 1115 Demonstration Waiver Services.

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.

**Farina Brown** Digitally signed by Farina Brown  
Date: 2020.07.28 13:11:46 -08'00'

[original or password-protected electronic signature]

Farina Brown, Deputy Director

State of Alaska  
Anchorage, AK 99503.

Kevin Meyer  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
WWW.LTGOV.ALASKA.GOV




530 West 7<sup>th</sup> Ave, Suite 1700  
Anchorage, Alaska 99501  
907.269.7460 269.0263  
LT.GOVERNOR@ALASKA.GOV

**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 21, 2020

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

Department of Health and Social Services emergency regulations re: Behavioral Health Services; Alaska Substance Use Disorder and Behavioral Health Program; Substance Use Disorder Waiver Services; Behavioral Health 1115 Demonstration Waiver Services, and Medicaid program; general services (7 AAC 70; 7 AAC 136; 7 AAC 138; 7 AAC 139; 7 AAC 160)

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Attorney General File:	Emergency Regulations
Regulation Filed:	5/21/2020
Effective Date:	5/21/2020
Expiration Date:	September 17, 2020 unless made permanent by the adopting agency
Print:	234, July 2020

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

## FINDING OF EMERGENCY

The Department of Health and Social Services (DHSS) finds that an emergency exists because the COVID-19 pandemic has created a glaring lack of services available for psychiatric crises at the time that those services are most in need. DHSS also finds that the attached regulations are necessary for the immediate preservation of public peace, health, safety or general welfare under AS 44.62.250. Moreover, DHSS finds that waiting for the normal 30-day public comment period is too lengthy given the unpredictable characteristics of the pandemic and the possibility of a second wave of infections as the state gradually reopens. The facts constituting the emergency include the following:

1. The onset of the COVID-19 pandemic has caused stress and anxiety in the general public. This increased stress and anxiety has resulted in more individuals seeking care for their mental and emotional health. The negative mental health effects of the pandemic are magnified in those who already suffer from mental illness or poor emotional health.

Specifically, the emergency the state is experiencing is impeding the hospitals' ability to manage mental health crises. The COVID-19 pandemic has forced hospitals to reallocate resources to expand capacity to manage the number of COVID-19 cases in each hospital's community and in the state. Therefore, emergency departments no longer have the capacity to serve individuals who present with a primary diagnosis of behavioral health. These individuals are quickly triaged, discharged and asked to follow up with their local community behavioral health provider.

The community behavioral health providers, however, are unable to provide the type of pre-crisis services designed to prevent individuals from seeking hospital care, and crisis services instead of hospital care. Suddenly, individuals in crisis have neither the safety of the emergency room nor the availability of traditional walk-in behavioral health services. *Therefore, the individuals experiencing a crisis have no system of care available to intercept subacute symptomatic behavior before they escalate into harm to self or others.*

The increased service demands on community behavioral health providers has forced most of those providers to maintain long wait lists. Under the current system of care, in an attempt to meet recipient need, many behavioral health services providers are already extending non-reimbursed care to recipients. As a result, providers are asking DHSS to expedite the regulations to enable them to provide the services and be reimbursed.



2. The crisis services available through the waiver provide the necessary intercept services (i.e. mobile crisis outreach and response, 23-hour crisis observation and stabilization) to reduce the burden on hospitals and community health providers and intervene as early as possible in the least restrictive manner.

3. While DHSS was pursuing this 1115 Waiver, it attempted to strengthen the behavioral health system through Medicaid rate increases and grant program awards. Notwithstanding DHSS's efforts, significant gaps remain in the continuum of care. The gaps in the continuum of care have been further exposed and exacerbated by the pandemic and created an emergency.

### Background

4. Following the above, the most notable gap is the lack of adequate psychiatric emergency services, including the availability of acute hospital care. These services are required to support persons who have been found by a judicial officer to be gravely disabled such that they cannot care for themselves or are a threat to others or themselves (AS 47.30.900).

5. DHSS funds many of these services through the Designated Evaluation and Treatment (DES/DET) system of care that is contemplated in AS 47.30. The current facilities under this program are the Alaska Psychiatric Institute ("API"), Fairbanks Memorial Hospital, Bartlett Regional Hospital, and Mat-Su Regional Health Center.

6. The DES/ DET system of care was in crisis in 2018 and 2019 because of a variety of factors. This crisis led to the Disability Law Center ("DLC") and the Public Defender Agency ("PDA") separately suing the State of Alaska. The PDA alleged that the state had illegally placed in a Department of Corrections ("DOC") facility two individuals who had been subject to ex parte mental health holds. The DLC alleged that the state's inability to accept people subject to ex parte mental health holds at the Alaska Psychiatric Institute ("API"), or other facilities besides those run by DOC or hospital emergency rooms, violated the state and federal constitutions.

a. After the parties presented evidence and filed written arguments, the superior court ordered DHSS to draft a plan to comply with what it determined were the requirements set forth by the Alaska Supreme Court in the case *In re Gabriel C.*, 324 P.3d 835 (Alaska 2014).

b. The superior court directed that DHSS's plan meet seven enumerated criteria. On January 21, 2020, DHSS filed its plan, *Addressing Gaps in the Crisis Psychiatric Response System* ("Plan").

c. A copy of the state's multifaceted plan to the court's order can be found at:

<http://dhss.alaska.gov/Commissioner/Documents/PDF/addressingGaps.PDF>

7. This current system of care is not sustainable, and has led to the erosion of health care needed by this vulnerable population.

### ADOPTION ORDER

Under the authority of AS 47.05.010, AS 47.05.012, AS 47.05.270, AS 47.07.030, AS 47.07.036, AS 47.07.040, AS 47.30.470, AS 47.30.475, AS 47.30.477, AS 47.30.530, AS 47.30.540, AS 47.30.570, AS 47.32.010, and AS 47.37.140, the attached 21 pages of regulation changes are therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

It is estimated that this action will require increased appropriations as shown on the attached fiscal note.

Adam Crum Digitally signed by Adam Crum  
Date: 2020.05.20 12:22:49  
-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 that on

May 21, 2020, at 2:00 p.m., I filed the attached regulation according to the provisions of AS 44.62.

*Kevin Meyer*

Lieutenant Governor *Kevin Meyer*

Effective: May 21, 2020.

Register: 234, July 2020.

Expires September 17, 2020  
unless made "permanent"  
by the adopting agency

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

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

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

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



*Kevin Meyer*

**KEVIN MEYER  
LIEUTENANT GOVERNOR**

EMERGENCY REGULATIONS

Register 234, July 2020

HEALTH AND SOCIAL SERVICES

Notes to reader:

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

**Title 7 Health and Social Services.**

7 AAC 70.030(a)(4) is amended to read:

(a) The department will approve an organization to provide behavioral health services in this state only if that organization meets the requirements for a community behavioral health services provider under 7 AAC 70.100 or 7 AAC 70.130 and provides one or more of the following:

...

(4) **1115 waiver services under 7 AAC 136.020** [1115 SUBSTANCE USE DISORDER WAIVER SERVICES UNDER 7 AAC 138];

(Eff. 10/1/2011, Register 199; am 4/9/2017, Register 222; am 7/1/2018, Register 226; am

5/21/2020, Register 234)

<b>Authority:</b>	AS 47.05.010	AS 47.30.477	AS 47.30.570
	AS 47.30.470	AS 47.30.530	AS 47.37.140
	AS 47.30.475	AS 47.30.540	

EMERGENCY REGULATIONS

Register 234, July 2020 HEALTH AND SOCIAL SERVICES

7 AAC 136.010(3) is amended to read:

(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*, adopted by reference in 7 AAC 160.900, and according to service criteria established under 7 AAC 138 **and 7 AAC 139**;

(Eff. 7/1/2019, Register 231; am 5 /21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 136.020(1) is amended to read:

(1) obtain department certification as an 1115 waiver services provider **and identify the 1115 waiver services the provider will provide** before delivering 1115 waiver services if the provider is a community behavioral health services provider;

7 AAC 136.020(3) is repealed and readopted to read:

(3) comply with the additional requirements listed in the

(A) *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for SUD Provider Services*, adopted by reference in 7 AAC 160.900, for SUD providers, including the documentation guidelines for 1115 waiver services; and

(B) *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, for behavioral health providers, including the documentation guidelines for 1115 waiver services. (Eff. 7/1/2019, Register 231; am 5 /21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030

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The section list in Article 2 of 7 AAC 138 is amended by adding a new section 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 and payment conditions

410. Requirement to pay substance use disorder care coordination services

450. Crisis response services

7 AAC 138.040(b) is amended to read:

(b) The department will not pay for substance use disorder 1115 waiver services beyond the limits listed in the *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for SUD Provider Services* [ALASKA BEHAVIORAL HEALTH PROVIDERS SERVICE STANDARDS AND ADMINISTRATIVE PROCEDURE], adopted by reference in 7 AAC 160.900, without prior authorization from the department.

(Eff. 7/1/2019, Register 231; am 11/10/2019, Register 232; am 5 / 21 /2020, Register 234 )

**Authority:** AS 47.05.010 AS 47.07.030

7 AAC 138.200(a)(1) is amended to read:

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(1) one of the department-approved screening tools listed in the Alaska Behavioral Health Providers Service Standards & Administrative Procedures for SUD Provider Services [ALASKA BEHAVIORAL HEALTH PROVIDERS SERVICE STANDARDS AND ADMINISTRATIVE PROCEDURES], adopted by reference in 7 AAC 160.900; and (Eff. 7/1/2019, Register 231; am 11/10/2019, Register 232; am 5 / 21 /2020; Register 234).

Authority: AS 47.05.010 AS 47.07.030

7 AAC 138.250(a) is amended by adding a new paragraph to read:

(a) The department will pay for the following outpatient substance use disorder treatment services under the 1115 waiver if the service is provided according to this chapter:

- (1) intensive outpatient services;
- (2) partial hospitalization services;
- (3) outpatient services.

(Eff. 7/1/2019, Register 231; am 11/10/2019, Register 232; am 5 / 21 /2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030

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

**7 AAC 138.450. Crisis response services.** (a) The following services may be provided to an eligible recipient under this chapter in any appropriate community setting:

- (1) peer-based crisis services, provided by a peer support specialist under 7 AAC

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138.400, to help an individual avoid the need for hospital emergency department services or the need for psychiatric hospitalization through services identified in a crisis plan by a mental health professional clinician that may include

- (A) a summary of crisis intervention needs;
- (B) facilitation of transition to other community-based resources or natural supports; and
- (C) advocacy for client needs with other service providers;

(2) mobile outreach and crisis response services must be provided by a mental health professional clinician in conjunction with at least one other qualified professional, as defined in *Alaska Behavioral Health Providers Services and Administrative Procedures for SUD Provider Services*, adopted by reference in 7 AAC 160.900, to

- (A) prevent a substance use disorder or mental health crisis from escalating;
- (B) stabilize an individual during or after a mental health crisis or crisis involving a substance use disorder; or
- (C) refer and connect to other appropriate services that may be needed to resolve the crisis;

(3) 23-hour crisis observation and stabilization services, that are provided for up to 23 hours and 59 minutes in a secure environment to an individual presenting with acute symptoms of mental or emotional distress, that must

- (A) be provided by medical staff supervised by a physician, a physician assistant, or an advanced practice registered nurse;
- (B) result in prompt evaluation and stabilization of the individual's



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condition; and

(C) ensure the individual is safe from self-harm, including suicidal behavior.

(b) The crisis residential and stabilization services provided to an eligible individual under this chapter presenting with acute mental or emotional disorders requiring psychiatric stabilization and care may be provided in a licensed general acute care hospital, psychiatric hospital, Indian Health Service facility, licensed critical access hospital, a community behavioral health services provider approved by the department under 7 AAC 136.020, or a crisis stabilization center under AS 47.32.900(22). The crisis residential and stabilization services must be provided

(1) as a short-term residential program with 16 or fewer beds;

(2) as a medically monitored stabilization service designed to restore the individual to a level of functioning that does not require inpatient hospitalization; and

(3) to assess the need for medication services and other post-discharge treatment and support services.

(c) A peer support specialist in this section is subject to the qualifications listed in 7 AAC 138.400(a) and (e).

(d) In this section, "short term" means no more than seven days, and may be extended through a service authorization. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.32.010

AS 47.05.270 AS 47.07.036

7 AAC is amended by adding a new chapter to read:

*DHSS Proposed Changes to Regulations, DBH, EMERGENCY REGS. Medicaid 1115 Behavioral Health Waiver Svcs. (7 AAC 70, 136, 138, 139, 160; Law File Number 2020200364); PUBLIC REVIEW DRAFT.05/20/2020.*

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**7 AAC 139. Behavioral Health 1115 Waiver Services.**

**Article**

1. Scope; Eligibility; Service Provision, Rates, and Authorization (7AAC 139.010 – 7 AAC 139.040)
2. Medicaid Behavioral Health 1115 Waiver Services (7AAC 139.100 – 7 AAC 139.400)
3. General Provisions (7AAC 139.900)

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

**Section**

010. Recipient eligibility
020. Provision of behavioral health 1115 waiver services
030. Provision of Medicaid state plan services
040. Service rates, limits, and authorization

**7 AAC 139.010. Recipient eligibility.** The following individuals may receive services under this chapter:

- (1) a youth under age 21 who
  - (A) is diagnosed with a mental health or substance use disorder;
  - (B) is at risk of developing a mental health or substance use disorder based upon a screening conducted under 7 AAC 135.100;
  - (C) is at risk of out-of-home placement;
  - (D) is currently in the custody of the state; or
  - (E) has been detained in a juvenile justice facility or treated in a residential

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treatment program or psychiatric hospital within the past year;

(2) an individual who meets the criteria under 7 AAC 135.055 for an adult experiencing a serious mental illness;

(3) an adult who is experiencing a mental disorder who meets the diagnostic criteria in the *Diagnostic and Statistical Manual of Mental Disorders*, adopted by reference in 7 AAC 70.910, or the *International Classification of Diseases - 10th Revision, Clinical Modification, (ICD-10-CM)*, adopted by reference in 7 AAC 70.910. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

**7 AAC 139.020. Provision of behavioral health 1115 waiver services.** The department will pay for behavioral health 1115 waiver services if the

- (1) recipient is eligible under 7 AAC 139.010;
- (2) provider meets the requirements in 7 AAC 136.020;
- (3) services are provided under this chapter; and
- (4) services are based upon an assessment conducted under 7 AAC 135.110,

except for youth described in 7 AAC 139.150(a)(1). (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

**7 AAC 139.030. 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

DHSS Proposed Changes to Regulations, DBH, EMERGENCY REGS. Medicaid 1115 Behavioral Health Waiver Svcs. (7 AAC 70, 136, 138, 139, 160; Law File Number 2020200364); PUBLIC REVIEW DRAFT.05/20/2020.

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provided to an eligible individual even if the individual is also receiving services under this chapter.

(b) A provider may only provide a behavioral health clinic service listed in 7 AAC 135.010(b) and a rehabilitation service listed in 7 AAC 135.010(c) concurrently with services under this chapter if the provider first obtains authorization from the department for a service listed in 7 AAC 135.010(b) or 7 AAC 135.010(c).

(c) A provider may conduct an assessment under 7 AAC 135.110 for an eligible individual under this chapter without prior authorization from the department.

(Eff. 5 / 21 /2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040  
AS 47.05.270 AS 47.07.036

**7 AAC 139.040. Service rates, limits, and authorization.** (a) The behavioral health 1115 waiver services rates 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 a behavioral health 1115 waiver service beyond the limits listed in *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, without prior authorization from the department.

(c) A provider of behavioral health 1115 waiver services must file a request for prior authorization of an extension for a behavioral health 1115 waiver service beyond service limits under (b) of this section using a form approved by the department. The request must

(1) be documented in the clinical record;

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- (2) include the expected duration of the service; and
- (3) include an explanation for the need to extend the service.

(d) A provider that meets the requirements of 7 AAC 136.020 may provide any behavioral health 1115 waiver service without prior authorization from the department.

(e) The department may review a provider’s clinical record to confirm the need for an extension of a behavioral health 1115 waiver service. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

**Article 2. Medicaid Behavioral Health 1115 Waiver Services.**

**Section**

- 100. Assessment and treatment plan services
- 150. Home-based family treatment services
- 200. Community-based care management services
- 250. Structured treatment services
- 300. Behavioral health residential treatment services
- 350. Crisis response services
- 400. Therapeutic treatment home services

**7 AAC 139.100. Assessment and treatment plan services.** The department will pay a provider to

- (1) conduct an assessment according to 7 AAC 135.110 for each recipient receiving services under this chapter;
- (2) develop an initial treatment plan for each recipient under 7 AAC 135.120; and

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(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.

(Eff. 5 / 21 /2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030

**7 AAC 139.150. Home-based family treatment services.** (a) The department will pay for home-based family treatment services according to the following criteria to prevent inpatient hospitalization and residential services for a youth listed in 7 AAC 139.010(1) if a combination of less intensive outpatient services under 7 AAC 135 has not been effective or is deemed likely to not be effective:

(1) level 1: for a youth at risk of out-of-home placement or diagnosed with or at risk to develop a mental health or substance use disorder as determined by a screening conducted under 7 AAC 135.100;

(2) level 2: for a youth at high risk of out-of-home placement;

(3) level 3: for a youth who is at imminent risk of out-of-home placement or who has been discharged from residential or psychiatric hospital treatment or from a juvenile detention facility.

(b) A provider may only provide level 1 home-based family treatment services if the screening is conducted under 7 AAC 135.100 using a screening tool listed in *Alaska Behavioral Health Provider Standards and Administrative Procedures*, adopted by reference in 7 AAC 160.900, that is designed to identify recipient problems with one or more social determinants of health.

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(c) A provider must provide level 1 home-based family treatment services according to a family services plan developed by the provider in collaboration with the family.

(d) A provider may only provide level 2 and level 3 home-based family treatment services if the assessment is conducted under 7 AAC 139.100 and also addresses how family relationships and family dynamics affect the recipient's identified problems.

(e) All levels of home-based family treatment services must include direct access to the component services described in *Alaska Behavioral Health Provider Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900. A provider that cannot provide one or more of the component services under this subsection must arrange for another provider to provide those services.

(f) In this section

(1) "high risk" means a person with a score of four or more on the *Adverse Childhood Experiences Questionnaires*, adopted by reference in 7 AAC 160.900; and

(2) "imminent risk" means a person who has been in contact with the division in the department responsible for child protection regarding issues that could lead to out-of-home placement. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010            AS 47.07.030            AS 47.07.036  
AS 47.05.270

**7 AAC 139.200. Community-based care management services.** (a) The following community-based care management services may be provided to any eligible recipient under this chapter:

(1) intensive case management services, that must be provided according to the

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criteria listed in 7 AAC 138.400(a)(3);

(2) community recovery support services, that must be provided according to the criteria listed in 7 AAC 138.400(a)(1).

(b) The assertive community treatment services may be provided to an individual listed in 7 AAC 139.010(2) who meets admission criteria defined in the *Alaska Behavioral Health Provider Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, and whose needs have not otherwise been adequately met through behavioral health services offered under 7 AAC 135. The assertive community treatment services must be

(1) available 24-hours a day, seven days a week, according to recipient need;

(2) provided according to the evidence-based practice criteria established for assertive community treatment documented in the *Alaska Behavioral Health Provider Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900; and

(3) provided in accordance with the component services outlined in the *Alaska Behavioral Health Providers Service Standards and Administrative Procedures*, adopted by reference in 7 AAC 160.900. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

**7 AAC 139.250. Structured treatment services.** (a) The structured treatment services may be provided to a recipient listed in 7 AAC 139.010 if the service is provided according to the following criteria:



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(1) partial hospitalization program services provided to treat a recipient's assessed psychiatric disorder to prevent relapse or the need for higher level of hospitalized care; partial hospitalization program services must

(A) be provided in a therapeutic environment that maintains daily scheduled treatment activities by providers qualified to treat individuals with significant mental health and co-occurring disorders;

(B) include direct access to psychiatric and medical consultation and treatment, including medication services; and

(C) provide a range of component services identified for partial hospitalization program services in the *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900;

(2) intensive outpatient services provided to a recipient experiencing significant functional impairment that interferes with the individual's ability to participate in one or more life domains, including home, work, school, and community; the intensive outpatient services must

(A) be provided as a therapeutic outpatient program that maintains daily scheduled treatment activities;

(B) address the clinical issues that affect the recipient's ability to cope with activities of daily living; and

(C) provide the range of component services identified for intensive outpatient services in *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900.

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(b) In this section, “activities of daily living” means

- (1) bed mobility;
- (2) transferring;
- (3) walking;
- (4) dressing;
- (5) eating and drinking;
- (6) toileting;
- (7) personal hygiene; and
- (8) bathing. (Eff. 5 / 21 /2020, Register 234 )

**Authority:** AS 47.05.010            AS 47.07.030            AS 47.07.036  
AS 47.05.270

**7 AAC 139.300. Behavioral health residential treatment services.** (a) The adult behavioral health residential treatment services must be provided in a facility approved by the department, and maintain a therapeutically structured and supervised environment according to the criteria listed in *Alaska Behavioral Health Providers Service Standards and Administrative Procedures*, adopted by reference in 7 AAC 160.900.

(b) The adult behavioral health residential treatment services must be provided in a facility with 16 or fewer beds by an interdisciplinary treatment team for an individual under 7 AAC 139.010(2) according to the following criteria:

- (1) level I for an adult diagnosed with a mental health or co-occurring mental health and substance use disorder with a prior history of continuous high service needs;

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(2) level 2 for an adult diagnosed with a mental health or substance use disorder who presents with behaviors or symptoms that require a level of care, supervision, or monitoring that is higher than that required for other adult residents in assisted living home care according to AS 47.33 and 7 AAC 75, and who have

(A) not responded to outpatient treatment; and

(B) a history of treatment needs for chronic mental health or substance use disorders that cannot be met in a less restrictive setting.

(c) A psychiatric assessment must be conducted for an adult receiving behavioral health residential treatment services before the department will approve a provider request for a service authorization to exceed one year.

(d) In this section, “high service needs” means using the same or a combination of three or more of the following in the past calendar year: acute psychiatric hospitalization, psychiatric emergency services, or involvement with the criminal justice system. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

**7 AAC 139.350. Crisis response services.** (a) The following services may be provided to an eligible recipient under this chapter in any appropriate community setting:

(1) peer-based crisis services, provided by a peer support specialist under 7 AAC 138.400 to help an individual avoid the need for hospital emergency department services or the need for psychiatric hospitalization through

(A) a summary of crisis intervention needs;

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(B) facilitation of transition to other community-based resources or natural supports; and

(C) advocacy for client needs with other service providers;

(2) mobile outreach and crisis response services must be provided by a mental health professional clinician in conjunction with at least one other qualified professional, as defined in the *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, to

(A) prevent a substance use disorder or mental health crisis from escalating;

(B) stabilize an individual during or after a mental health crisis or a substance use disorder crisis; and

(C) refer and connect the individual to other appropriate services that may be needed to resolve the crisis;

(3) 23-hour crisis observation and stabilization services, provided to an individual presenting with acute symptoms of mental or emotional distress for up to 23 hours and 59 minutes in a secure environment, that must

(A) be provided by medical staff supervised by a physician, a physician assistant, or an advanced practice registered nurse;

(B) result in prompt evaluation and stabilization of the individual's condition; and

(C) ensure the individual is safe from self-harm, including suicidal behavior.

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(b) The crisis residential and stabilization services provided to an eligible individual presenting with acute mental or emotional disorders requiring psychiatric stabilization and care may be provided in a licensed general acute care hospital, psychiatric hospital, Indian Health Service facility, licensed critical access hospital, by a community behavioral health services provider approved by the department under 7 AAC 136.020, or a crisis stabilization center under AS 47.32.900(22). The crisis residential and stabilization services must be provided

(1) as a short-term residential program with 16 or fewer beds;

(2) as a medically monitored stabilization service designed to restore the individual to a level of functioning that does not require inpatient hospitalization; and

(3) to assess the need for medication services and other post-discharge treatment and support services.

(c) A peer support specialist in this section is subject to the qualifications listed in 7 AAC 138.400(a) and (e).

(d) In this section, "short term" means no more than seven days, and may be extended through a service authorization. (Eff. 5/21/2020, Register 234)

**Authority:** AS 47.05.010 AS 47.07.030 AS 47.07.036  
AS 47.05.270

**7 AAC 139.400. Therapeutic treatment homes services.** The department will pay for therapeutic treatment home services that are provided to an eligible youth under 7 AAC 139.010(1), who experiences severe mental, emotional, or behavioral health needs that cannot be stabilized in a less intensive home setting and that must

(1) be provided in a licensed foster home under 7 AAC 50 by at least one licensed

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foster parent;

(2) include trauma-informed care by licensed foster parents and other providers listed in *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900, who have received documented training or education in principles of trauma informed care;

(3) include the component services for therapeutic treatment homes listed in *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, adopted by reference in 7 AAC 160.900; and

(4) be provided under the direction and supervision of a community behavioral health services provider approved under 7 AAC 136.020. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010            AS 47.07.030            AS 47.07.036  
AS 47.05.270

**Article 3. General Provisions.**

**7 AAC 139.900. Transition to behavioral health 1115 waiver services.** (a) A provider may only provide the 1115 waiver services listed in this chapter upon approval by the department under 7 AAC 136.020.

(b) A provider must update a recipient treatment plan under 7 AAC 135.130 before providing a new service listed in this chapter for a recipient who is currently receiving services under 7 AAC 70 and 7 AAC 135. (Eff. 5 / 21 /2020, Register 234)

**Authority:** AS 47.05.010            AS 47.07.030            AS 47.07.036  
AS 47.05.270

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7 AAC 160.900(d)(63) is repealed:

(63) repealed 5 / 21 /2020;

7 AAC 160.900(d)(65) is amended to read:

(65) Chart of 1115 Medicaid Waiver Services, dated May 27, 2020; [CHART OF 1115 WAIVER SERVICES, JUNE 2019 EDITION]

7 AAC 160.900(d) is amended by adding new paragraphs to read:

(66) the *Adverse Childhood Experiences Questionnaires*, dated May 27, 2020.

(67) the *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for SUD Provider Services*, dated May 27, 2020;

(68) the *Alaska Behavioral Health Providers Service Standards & Administrative Procedures for Behavioral Health Provider Services*, dated May 27, 2020.

(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,

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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 6/2/2019, Register 230; am 6/13/2019, Register 230; am 7/1/2019, Register 231; am 10/25/2019, Register 232; am 11/10/2019, Register 232; am 5 / 21 /2020, Register 234)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040  
AS 47.05.012