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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Triptaa Surve
Department of Health and Social Services

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: November 17, 2020

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

Department of Health and Social Services regulations re: restriction of a Medicaid recipient's choice of providers (7 AAC 105.600)

Attorney General File:	2019200876
Regulation Filed:	11/17/2020
Effective Date:	1/1/2021
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 & SOCIAL SERVICES

The attached 5 pages of regulations, dealing with Medicaid Care Management Program, specifically, 7 AAC 105.600. Medicaid Provider and Recipient Participation; Restriction of recipient's choice of providers, are adopted and certified to be a correct copy of the regulation changes that the Department of Health and Social Services adopts under the authority of AS 47.05.010, AS 47.07.030, and AS 47.07.040, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

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

The regulation changes adopted under this order take effect on January 1, 2021, as provided in AS 44.62.180.

Adam Crum

Digitally signed by Adam Crum
Date: 2020.11.06 15:33:14 -09'00'

Adam Crum, Commissioner
Department of Health & Social Services

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that¹ on November 17, 2020, at 2:08 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Kevin Meyer
for Lieutenant Governor *Kevin Meyer*

Effective:

January 1, 2021

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.**



K-Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

7 AAC 105.600 is repealed and readopted to read:

7 AAC 105.600. Restriction of recipient's choice of providers. (a) The department may restrict a recipient's choice of medical providers if the department finds that a recipient has used Medicaid services at a frequency or amount that is not appropriate as provided in (b) of this section.

(b) A recipient's use of Medicaid services is not appropriate if one or more of the following occur:

(1) the department identifies that the recipient

(A) received prescriptions from one or more providers for medications in total average daily doses that exceed those recommended in *Drug Facts and Comparisons*, adopted by reference in 7 AAC 160.900;

(B) during a period of three consecutive months, received prescription drugs from three or more pharmacy locations;

(C) during a period of three consecutive months, received an opioid prescription from two or more prescribers;

(D) during a period of three consecutive months, paid cash two or more times for a United States Drug Enforcement Administration-designated Schedule II - V drug;

(E) during a 30-day period, received concurrent prescriptions for an opioid and benzodiazepine from more than one prescriber;

(F) over a period of nine consecutive months or longer, was dispensed medication containing buprenorphine with an average daily dose of greater than 16

milligrams;

(G) during a period of not less than three consecutive months, used a medical item or service with a frequency that exceeds two standard deviations from the arithmetic mean of the frequency of use of the medical item or service by recipients of medical assistance programs administered by the department who have used the medical item or service as shown in the department's most recent statistical analysis of usage of that medical item or service;

(H) during a period of 12 consecutive months, received treatment through an emergency department three or more times for a non-emergent condition;

(I) for a reason that was within the control of the recipient, traveled using department-authorized transportation and failed to receive services for which the travel was authorized; or

(J) during a period of six consecutive months, failed to keep three or more appointments for services covered under 7 AAC 105 - 7 AAC 160;

(2) a qualified health care professional employed by or designated by the department determines that a recipient's use of Medicaid services was at a frequency or amount that is not medically necessary based on an evaluation of the recipient's medical or billing history, and with consideration of one or more of the following:

(A) data from the prescription drug monitoring program (PDMP) controlled substance prescription database established under AS 17.30.200;

(B) application of clinical judgment using available information within the scope of practice of the qualified health care professional;

(C) the recipient's age, diagnosis, complications, chronic illnesses, use of different medical providers and hospitals, and medical care received;

(D) a referral made to the department indicating that the recipient has used a medical item or service at a frequency or amount that is not appropriate; and

(E) other tracking tools or information available to the department.

(c) Following identification of one or more instances identified in (b) of this section, the department will

(1) monitor the recipient's use of Medicaid services for 90 days; or

(2) notify the recipient, in writing,

(A) that the department will restrict the recipient's choice of provider as provided in (d) of this section; and

(B) of the recipient's fair hearing rights under 7 AAC 49.

(d) The department will assign a restricted recipient one primary care provider and one pharmacy within reasonable proximity to the recipient's home, and may assign one dental provider and one behavioral health provider, also within reasonable proximity. The department will include the word "RESTRICTED" and will identify the designated providers on the recipient's Medicaid identification card.

(e) A restricted recipient may obtain services and items from only the designated providers identified under (d) of this section, except that

(1) the recipient may receive medical services from a non-designated enrolled provider if the designated provider refers the recipient to the non-designated enrolled provider;

(2) the recipient may receive emergency services from any enrolled provider.

(f) The department may restrict provider choice for a reasonable period of time, not to exceed 24 months of eligibility upon initial placement, and 36 months for each subsequent placement. The department will review the restriction before the end of each placement. The department will notify the recipient, in writing before each subsequent placement,

(1) of the department's decision to continue to restrict the recipient's choice of provider under (d) of this section; and

(2) of the recipient's fair hearing rights under 7 AAC 49.

(g) The designation of a provider under (d) of this section may be changed only if the

(1) provider requests the change;

(2) provider disenrolls from the Medicaid program;

(3) recipient moves to a new geographic area; or

(4) department finds that the recipient does not have reasonable access to Medicaid services of adequate quality.

(h) Except as provided in (e) of this section, the department will pay for a service covered under 7 AAC 105 - 7 AAC 160 that is provided to a recipient who is restricted under this section only if the service is performed by a provider designated on the recipient's Medicaid identification card.

(i) In this section,

(1) "emergency service" means

(A) inpatient hospital care provided to a recipient admitted into the hospital from the emergency room of that hospital;

(B) outpatient hospital services and physician services provided to a

recipient in response to the sudden and unexpected onset of an illness or accidental injury that requires immediate medical attention to safeguard the recipient's life; in this subparagraph, "immediate medical attention" means medical care that the department determines cannot be delayed for 24 hours or more after the onset of the illness or occurrence of the accidental injury;

(2) "non-emergent condition" means a condition that does not require an emergency service;

(3) "qualified health care professional" means a health care provider who is licensed under AS 08 and whose area of licensure relates to the service or item identified under (b) of this section. (Eff. 2/1/2010, Register 193; am 1 / 1 / 2021, Register 236)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

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

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

Date: November 12, 2020

File No.: 2019200876

Tel. No.: 465-3600

Re: Department of Health and Social
Services regulations re: restriction of
a Medicaid recipient's choice of
providers (7 AAC 105.600)

The Department of Law has reviewed the attached regulations of the Department of Health and Social Services against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. The regulations were adopted by the Department of Health and Social Services after the close of the public comment period. The regulations concern the Medicaid care management program: restrictions that the department places on a Medicaid recipient's choice of providers in the rare event that the recipient overuses Medicaid services, generally as demonstrated through a statistics-based behavior pattern methodology for determining medical necessity.

The January 6, 2020 public notice and the November 6, 2020 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required. We note that the adoption order sets a special effective date of January 1, 2021 for these regulations.

SCW

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

Triptaa Surve, Regulations Contact
Department of Health and Social Services

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

Jason Ball
Division of Health Care Services
Department of Health and Social Services

Alex J. Hildebrand, Assistant Attorney General
Human Services Section

NOTICE OF PROPOSED CHANGES ON THE MEDICAID CARE MANAGEMENT PROGRAM
IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations on the Medicaid care management program.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with the Medicaid care management program, including the following:

- 7 AAC 105.600. Medicaid Provider and Recipient Participation; Restriction of recipient's choice of providers, are proposed to be changed as follows:
 - Remove the medical records review requirement and amend the medical necessity language to a statistics based behavior pattern methodology.
 - Add specific behavior patterns.
 - Add the option to assign designated dental and mental health providers.
 - Add program referral parameters.
 - Increase the period of time for initial placement.
 - Add a provision to allow subsequent placements.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Ms. Susan Miller Dunkin at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Building L, Attention: Susan Miller Dunkin, Anchorage, AK 99503. Additionally, the Department of Health & Social Services will accept comments by electronic mail at susan.dunkin@alaska.gov. The comments must be received not later than 5 p.m. on February 25, 2020.

Oral or written comments also may be submitted at a hearing to be held on February 12, 2020, at the Frontier Building, in conference rooms 880 and 890, 3601 C Street, Anchorage, AK 99503. The hearing will be held from 3:30 p.m. to 4:30 p.m., and might be extended to accommodate those present before 4:00 p.m. who did not have an opportunity to comment. If you are unable to attend in person, but would like to comment during the oral public hearing, you can call the teleconference number 1-800-768-6727 (Toll Free).

You may submit written questions relevant to the proposed action to Ms. Susan Miller Dunkin by e-mail at susan.dunkin@alaska.gov or at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Building L, Attention: Susan Miller Dunkin, Anchorage, AK 99503. The questions must be received at least 10 days before the end of the public comment period. The Department of Health & Social Services will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and agency website at <http://www.dhss.alaska.gov/dhcs/Pages/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Ms. Jolene Withers at jolene.withers@alaska.gov or at (907) 334-2446 not later than February 3, 2020, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Ms. Susan Miller Dunkin at susan.dunkin@alaska.gov or by telephone at (907) 269-3638.

After the public comment period ends, the Department of Health & Social Services will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 47.05.010; AS 47.07.020; AS 47.07.030; AS 47.07.040; AS 47.07.042.

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

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

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

DATE: December 26, 2019.

/s/Adam Crum

Commissioner,

Department of Health & Social Services.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Health & Social Services
2. General subject of regulation: Medicaid Care Management Program (specifically, Medicaid Provider & Recipient Participation; Restriction of recipient's choice of providers, 7 AAC 105.600)
3. Citation of regulation (may be grouped): 7 AAC 105.600
4. Department of Law file number, if any: 2019200876

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): _____
- (X) Development of program standards
- () Other (identify): _____

6. Appropriation/Allocation: N/A

7. Estimated annual cost to comply with the proposed action to:

A private person: \$0.

Another state agency: \$0.

A municipality: \$0.

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

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

9. The name of the contact person for the regulation:
Name: Ms. Susan Miller Dunkin

Title: Medicaid Program Specialist IV

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

Telephone: (907) 269-3638

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

10. The origin of the proposed action:

- ☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change⁷
☐ Other (identify): _____

11.

Date: 12/12/2019

Prepared by: _____



[signature]

Name (printed): Susan Miller Dunkin

Title (printed): Medicaid Program Specialist IV

Telephone: (907) 269-3638

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Susan Miller Dunkin, of the Department of Health & Social Services, under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to Medicaid Care Management Program, specifically, 7 AAC 105.600. Medicaid Provider and Recipient Participation; Restriction of recipient's choice of providers, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1).

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

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

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

Susan Miller Dunkin

Digitally signed by Susan Miller
Dunkin
Date: 2020.06.09 19:11:14 -08'00'

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

State of Alaska
Anchorage, AK 99503

AFFIDAVIT OF ORAL HEARING

I, Susan Miller Dunkin, of the Department of Health & Social Services, under penalty of perjury, state the following:

On February 12, 2020, at 3:30 p.m., in conference rooms 880 and 890, at the Frontier Building, 3601 C Street, Anchorage, AK 99503, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to the Medicaid Care Management Program, specifically, 7 AAC 105.600. Medicaid Provider and Recipient Participation; Restriction of recipient's choice of providers.

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.

Susan Miller Dunkin

Digitally signed by Susan Miller
Dunkin
Date: 2020.06.09 19:14:31 -08'00'

[original or password-protected electronic signature]

Susan Miller Dunkin, Medicaid Program Specialist IV

State of Alaska
Anchorage, AK 99503.

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

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Order #: W0012941

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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

01/06/2020

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 6th day of January 2020.

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

STATE OF ALASKA
NOTARY
PUBLIC
Jada L. Nowling

MY COMMISSION EXPIRES

7/14/2020

NOTICE OF PROPOSED CHANGES ON THE MEDICAID CARE MANAGEMENT PROGRAM IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with the Medicaid care management program, including the following:

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DATE: December 26, 2019
/s/Adam Crum
Commissioner
Department of Health & Social Services.

Published: January 6, 2020

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Susan MillerDunkin, 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 the Medicaid Care Management Program, specifically, 7 AAC 105.600. Medicaid Provider and Recipient Participation; Restriction of recipient's choice of providers.

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.

Susan Miller Dunkin

Digitally signed by Susan Miller
Dunkin
Date: 2020.06.09 19:10:25 -08'00'

[original or password-protected electronic signature]

Susan Miller Dunkin, Medicaid Program Specialist IV

State of Alaska
Anchorage, AK 99503.