

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




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460
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: December 29, 2020

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

Department of Health and Social Services regulations re: Medicaid coverage and payment for outpatient hospital observation services (7 AAC 140.310(e))

Attorney General File:	2020200499
Regulation Filed:	12/29/2020
Effective Date:	01/28/2021
Print:	237, April 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 1 page of regulations, dealing with Medicaid Outpatient Hospital Observation Services, specifically, Medicaid Coverage; Facility and Facility-Based Services. Covered hospital services (7 AAC 140.310), 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 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 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: 2020.12.03 10:56:01 -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 December 29,
2020, at 3:49 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.

April Simpson
for Lieutenant Governor *Kevin Meyer*

Effective: January 28, 2021

Register: 237, April 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.**



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

**KEVIN MEYER
LIEUTENANT GOVERNOR**

7 AAC 140.310 is amended by adding a new subsection to read:

(e) The department will pay for outpatient hospital observation services, not to exceed 48 hours, only if a recipient's condition warrants evaluation.

(Eff. 2/1/2010, Register 193; am 1 / 28 / 2021, Register 237)

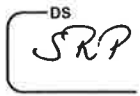
Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: December 21, 2020

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

File No.: 2020200499

Tel. No.: 465-3600

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

Re: Department of Health and Social
Services regulations re: Medicaid
coverage and payment for outpatient
hospital observation services (7 AAC
140.310(e))

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 provide for Medicaid coverage and payment for outpatient hospital observation services, not to exceed 48 hours, only if a recipient's condition warrants evaluation.

The September 3, 2020 public notice and the December 3, 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 have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

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, Medicaid Program Specialist
Division of Health Care Services
Department of Health and Social Services

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

NOTICE OF PROPOSED CHANGES ON MEDICAID OUTPATIENT HOSPITAL OBSERVATION
SERVICES COVERAGE IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL
SERVICES

BRIEF DESCRIPTION

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

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

- 7 AAC 140.310. Medicaid Coverage; Facility and Facility-Based Services. Covered hospital services, are proposed to be changed as follows:
 - Add a new subsection to extend the outpatient hospital observation service limit from 24 hours to 48 hours.

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 Miler Dunkin, Anchorage, AK 99503. Additionally, the Department of Health & Social Services will accept comments by electronic mail at susan.dunkin@alaska.gov . The comments must be received not later than 5 p.m. on October 14, 2020.

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. Susan Miller Dunkin at susan.dunkin@alaska.gov or at (907) 269-3638 not later than October 5, 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.

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

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

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

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

DATE; August 31, 2020.

/s/Adam Crum

Commissioner,

Department of Health & Social Services

State of Alaska.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Health & Social Services
2. General subject of regulation: Medicaid Outpatient Hospital Observation Services Coverage, specifically, 7 AAC 140.310 Medicaid Coverage; Facility and Facility-Based Services. Covered hospital services.
3. Citation of regulation (may be grouped): 7 AAC 140
4. Department of Law file number, if any: 2020200499
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: Department of Health and Social Services/Health Care Services/Medical Assistance Administration
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 or (907) 310-2769
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 & Prepared by: _____

Susan Miller
Dunkin

Digitally signed by
Susan Miller Dunkin
Date: 2020.07.27
11:50:21 -08'00'

[signature]

Name (printed): Susan Miller Dunkin

Title (printed): Medicaid Program Specialist IV

Telephone: (907) 269-3638 or (907) 310-2769

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 Outpatient Hospital Observation Services, specifically, Medicaid Coverage; Facility and Facility-Based Services. Covered hospital services (7 AAC 140.310), 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: 2020.11.04
09:32:59 -09'00'

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

State of Alaska
Anchorage, AK 99503

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

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

Order #: W0017638

Cost: \$408.4

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

09/03/2020

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 4th day of September 2020.

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

MY COMMISSION EXPIRES

4/14/21
ANGELA M SIMMONS
NOTARY PUBLIC
State of Alaska
My Commission Expires Apr. 14, 2021

NOTICE OF PROPOSED CHANGES ON MEDICAID OUTPATIENT HOSPITAL OBSERVATION SERVICES COVERAGE IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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

* 7 AAC 140.310. Medicaid Coverage; Facility and Facility-Based Services. Covered hospital services, are proposed to be changed as follows:

o Add a new subsection to extend the outpatient hospital observation service limit from 24 hours to 48 hours.

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 October 14, 2020.

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

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DATE: August 31, 2020.
/s/Adam Crum
Commissioner,
Department of Health & Social Services
State of Alaska.

Published: September 3, 2020

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

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

In compliance with AS 44.62.215, the Department of Health & Social Services has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Health & Social Services regulation on Medicaid Outpatient Hospital Observation Services, specifically, Medicaid Coverage; Facility and Facility-Based Services. Covered hospital services (7 AAC 140.310).

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: 2020.11.04 09:32:00
-09'00'

[original or password-protected electronic signature]

Susan Miller Dunkin, Medicaid Program Specialist IV

State of Alaska
Anchorage, AK 99503.