

Kevin Meyer
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: January 13, 2021

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

Department of Health and Social Services regulations re: Medicaid coverage and payment and electronic visit verification (EVV) system for personal care services (7 AAC 105.230(f); 7 AAC 125.070; 7 AAC 127.053)

Attorney General File:	2020200598
Regulation Filed:	1/13/2021
Effective Date:	2/12/2021
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 3 pages of regulations, dealing with the Electronic Visit Verification System (7 AAC 105, 125, 127), specifically, 7 AAC 105. Medicaid Provider and Recipient Participation; 7 AAC 125. Medicaid Coverage; Personal Care Services and Home Health Care Services; 7 AAC 127. Community First Choice Personal Care Services, are adopted and certified to be a correct copy of the regulation changes that the Department of Health and Social Services adopts under the authority of AS 47.05.010, AS 47.07.030, and AS 47.07.040, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

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

The regulation changes adopted under this order take effect on 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: 2021.01.11 12:30:14 -09'00'

Adam Crum, Commissioner
Department of Health & Social Services

FILING CERTIFICATION

April Simpson for

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that¹ on January 13,
2021, at 1:21 p..m., I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.

for April Simpson
for Lieutenant Governor *Kevin Meyer*

Effective: February 12, 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 dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

The introductory language of 7 AAC 105.230(f) is amended to read:

(f) A provider who maintains all or part of the provider's records in an electronic format shall ensure that the data required to be maintained by this section is available and accessible under this chapter or if requested under 7 AAC 105.240(a). The electronic records include the use of an electronic visit verification system required under 7 AAC 125.070 and 127.053. A provider's electronic data storage system must

...

(Eff. 2/1/2010, Register 193; am 6/7/2018, Register 226; am 2/6/2020, Register 233; am 2 / 12 / 2021, Register ~~237~~)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 125 is amended by adding a new section to read:

7 AAC 125.070. Electronic visit verification. (a) A provider of personal care services shall use an electronic visit verification (EVV) system that is either provided or approved by the department. If a provider decides to use its own EVV system or vendor, that system must include at the time of service delivery, and report to the state's EVV system, the following data:

- (1) the name of the agency;
- (2) the identity of the rendering provider;
- (3) the identity of the recipient;
- (4) the location of the service;
- (5) the date of the service;
- (6) the start and stop times of the service; and

(7) the type of service provided.

(b) A provider of personal care services

(1) may not submit a claim for payment under 7 AAC 125.010 - 7 AAC 125.199

(personal care services) without also submitting the EVV data to support the claim;

(2) must affirm the accuracy of each EVV submission, and must review and resolve, at least every calendar quarter, any exceptions in the EVV system that the provider uses;

(3) must repay to the department any identified overpayment within 90 days; and

(4) must coordinate and upload all aggregate data into the department's EVV system on a daily basis or at another frequency specified by the department, if the provider is not using the department's EVV system.

(c) In this section, "EVV" means electronic visit verification. (Eff. 2 / 12 / 2021,

Register 237)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 127 is amended by adding a new section to read:

7 AAC 127.053. Electronic visit verification. (a) A provider of Community First Choice personal care services under 7 AAC 127.040(a)(2) shall use an electronic visit verification (EVV) system that is either provided or approved by the department. If a provider decides to use its own EVV system or vendor, that system must include at the time of service delivery, and report to the state's EVV system, the following data:

(1) the name of the agency;

(2) the identity of the rendering provider;

- (3) the identity of the recipient;
- (4) the location of the service;
- (5) the date of the service;
- (6) the start and stop times of the service; and
- (7) the type of service provided.

(b) A provider of Community First Choice personal care services under 7 AAC

127.040(a)(2)

- (1) may not submit a claim for payment under 7 AAC 127 for those services without also submitting the EVV data to support the claim;
- (2) must affirm the accuracy of each EVV submission, and must review and resolve, at least every calendar quarter, any exceptions in the EVV system that the provider uses;
- (3) must repay to the department any identified overpayment within 90 days; and
- (4) must coordinate and upload all aggregate data into the department's EVV system on a daily basis or at another frequency specified by the department, if the provider is not using the department's EVV system.

(c) In this section, "EVV" means electronic visit verification. (Eff. 2 / 12 / 2021, Register 231)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

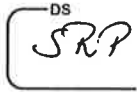
MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: January 12, 2021

File No.: 2020200598

Thru: Susan R. Pollard 
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 regulations re: Medicaid
coverage and payment and electronic
visit verification (EVV) system for
personal care services (7 AAC
105.230(f); 7 AAC 125.070; 7 AAC
127.053)

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. For Medicaid coverage and payment for personal care services or Community First Choice personal care services, the regulations require that providers keep records of visits to service recipients through an electronic visit verification system.

The October 15, 2020 public notice and the January 11, 2021 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SCW

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

Triptaa Surve, Regulations Contact
Department of Health and Social Services

John Lee, Director
Division of Senior and Disabilities Services
Department of Health and Social Services

Jetta Whittaker
Division of Senior and Disabilities Services
Department of Health and Social Services

Anthony Newman
Division of Senior and Disabilities Services
Department of Health and Social Services

Paul R. Peterson, Assistant Attorney General
Human Services Section

NOTICE OF PROPOSED CHANGES ON PERSONAL CARE SERVICES PROVIDER USE OF AN ELECTRONIC VISIT VERIFICATION SYSTEM IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES.

BRIEF DESCRIPTION

The Department of Health & Social Services proposes to change regulations to require a personal care services provider to use an electronic visit verification system.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with the requirements for providers of personal care services and Community First Choice personal care services to use an electronic visit verification system, including the following:

- **7 AAC 105.230. Medicaid Provider and Recipient Participation.** Requirements for provider records, is proposed to be changed as follows:
 - Amend to add the use of an electronic verification system.
- **7 AAC 125. Medicaid Coverage; Personal Care Services and Home Health Care Services.**
 - Add a new section that requires a provider of personal care services to use an electronic visit verification system.
- **7 AAC 127. Community First Choice Personal Care Services.**
 - Add a new section that requires a provider of Community First Choice personal care services to use an electronic visit verification system.

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 the State of Alaska, Department of Health & Social Services, Division of Senior and Disabilities Services, Attention: Jetta Whittaker, P.O. Box 110680, Juneau, Alaska 99811-0680. Additionally, Department of Health and Social Service will accept comments by facsimile at (907) 465-1170 and by electronic mail at jetta.whittaker@alaska.gov . The comments must be received not later than 5:00 p.m. on November 23, 2020.

You may provide oral comments relevant to the proposed action via telephone at the hearing to be held on November 10, 2020, 12:00 p.m. – 1:00 p.m., by calling 1- (800) 315-6338 and using code 34773737# at the prompt. 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 12:00 p.m. The Department of Health & Social Services will give priority to those who call in before 12:30 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 Jetta Whittaker, by e-mail at jetta.whittaker@alaska.gov or mail at the State of Alaska, Department of Health & Social Services, Division of Senior and Disabilities Services, Attention: Jetta Whittaker, P.O. Box 110680, Juneau, Alaska 99811-0680. The questions must be received at least 10 days before the end of the public comment period. The Department of Health and 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 Jetta Whittaker by electronic mail at jetta.whittaker@alaska.gov or (907) 465-1605 not later than November 4, 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 Jetta Whittaker at jetta.whittaker@alaska.gov or (907) 465-1605.

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.

DATE: October 12, 2020.

/s/Adam Crum

Commissioner,

Department of Health & Social Services

State of Alaska.

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Department of Health & Social Services (DHSS)
2. General subject of regulation: Electronic Visit Verification System
3. Citation of regulation (may be grouped): 7 AAC 105, 125, 127.
4. Department of Law file number, if any: 2020200598
5. Reason for the proposed action:
☒ (X) Compliance with federal law or action (identify): 21st Century Cures Act (see <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/electronic-visit-verification-evv/index.html>)
☐ () 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 Services/Senior & Disabilities Services


7. Estimated annual cost to comply with the proposed action to:
- A private person: \$0 (There is, however, a potential cost to private personal care services agencies; that cost is yet to be determined).
- 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
Operating Cost	\$ <u>550.0</u>	\$ <u>0.0</u>
Capital Cost	\$ <u>0.0</u>	\$ <u>0.0</u>
<i>(The \$ 4,953.1 cost of developing the EVV system was funded through a capital budget appropriation in FY19; federal match for system development is higher, so split \$ 4,272.9 federal funds, \$ 680.2 general funds).</i>		
1002 Federal receipts	\$ <u>412.5</u>	\$ <u>0.0</u>
1003 General fund match	\$ <u>137.5</u>	\$ <u>0.0</u>
1004 General fund	\$ _____	\$ _____
1005 General fund/ program	\$ _____	\$ _____
Other (identify)	\$ _____	\$ _____

9. The name of the contact person for the regulation:
Name: Jetta Whittaker
Title: Health Program Manager III
Address: 240 Main Street, Suite 600, Juneau, AK 99801
Telephone: (907) 464-1605
E-mail address: jetta.whittaker@alaska.gov

10. The origin of the proposed action:
☐ Staff of state agency
☒ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify): _____

11. Date & Prepared by:  Digitally signed by Jetta Whittaker
Date: 2020.10.09 06:04:49 -0800
[signature]
Name (printed): Jetta Whittaker
Title (printed): Health Program Manager III
Telephone: (907) 465-1605

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Jetta Whittaker, Health Program Manager III, 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 Electronic Visit Verification System (7 AAC 105, 125, 127), specifically, 7 AAC 105. *Medicaid Provider and Recipient Participation*; 7 AAC 125. *Medicaid Coverage; Personal Care Services and Home Health Care Services*; 7 AAC 127. *Community First Choice Personal Care Services*, has been given by being

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

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

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.

Jetta Whittaker Digitally signed by Jetta Whittaker
Date: 2020.11.30 14:10:33 -09'00'

[original or password-protected electronic signature]
Jetta Whittaker, Health Program Manager III

State of Alaska
Juneau, AK 99801.

AFFIDAVIT OF ORAL HEARING

I, Jennifer Roberts, Medicaid Program Specialist III, of the Department of Health & Social Services, under penalty of perjury, state the following:

On November 10, 2020, at 12:00 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 changes to Electronic Visit Verification System (7 AAC 105, 125, 127), specifically, 7 AAC 105. *Medicaid Provider and Recipient Participation*; 7 AAC 125. *Medicaid Coverage; Personal Care Services and Home Health Care Services*; 7 AAC 127. *Community First Choice Personal Care 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.

Jennifer Roberts

Digitally signed by Jennifer Roberts
Date: 2020.11.30 15:41:14 -09'00'

[original or password-protected electronic signature]

Jennifer Roberts, Medicaid Program Specialist III

State of Alaska
Juneau, AK 99801.

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Jetta Whittaker, Health Program Manager III, 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 Electronic Visit Verification System (7 AAC 105, 125, 127), specifically, 7 AAC 105. *Medicaid Provider and Recipient Participation*; 7 AAC 125. *Medicaid Coverage; Personal Care Services and Home Health Care Services*; 7 AAC 127. *Community First Choice Personal Care 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.

Jetta Whittaker

Digitally signed by Jetta
Whittaker
Date: 2020.11.30 14:13:41 -09'00'

[original or password-protected electronic signature]

Jetta Whittaker, Health Program Manager III

State of Alaska
Juneau, AK 99801.

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

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

Order #: W0018472

Cost: \$478.12

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

10/15/2020

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 15th day of October 2020.

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

MY COMMISSION EXPIRES

7/14/2024

NOTICE OF PROPOSED CHANGES ON PERSONAL CARE SERVICES PROVIDER USE OF AN ELECTRONIC VISIT VERIFICATION SYSTEM IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES.

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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.

DATE: October 12, 2020.
/s/Adam Crum
Commissioner,
Department of Health & Social Services
State of Alaska.

Published: October 15, 2020

NOTARY PUBLIC
JADA L. NOWLING
STATE OF ALASKA
MY COMMISSION EXPIRES July 14, 2024