

DEPARTMENT OF HEALTH & SOCIAL SERVICES



PROPOSED CHANGES TO REGULATIONS

MEDICAID EMPLOYMENT SERVICES COVERAGE

7 AAC 130. Medicaid Coverage; Home and Community-Based Waiver Services.

- 7 AAC 130.231. Services during temporary absence.
- 7 AAC 130.265. Residential habilitation services.
- 7 AAC 130.270. Employment Services.

7 AAC 160.900. Medicaid Program; General Provisions. Requirements adopted by reference.



PUBLIC REVIEW DRAFT

January 26, 2021.

COMMENT PERIOD ENDS: March 12, 2021.

**Please see the public notice for details about how to comment
on these proposed changes.**

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paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.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.

Chapter 130. Medicaid Coverage; Home and Community-Based Waiver Services.

7 AAC 130.231(a)(2) is amended by adding a sub-paragraph to read:

7 AAC 130.231. Services during temporary absence.

(F) employment services under 7 AAC 130.270;

(Eff. 7/1/2013, Register 206; am 11/5/2017, Register 224; am ____/____/____, Register ____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.265. Residential habilitation services.

7 AAC 130.265 is amended by adding a new sub-section to read:

(k) The department may authorize personal care services at the place of employment for recipients of group home or family habilitation services, if that place of employment is separate from the recipient’s residence, subject to the guidance in 7 AAC 125.050(a)(3) and 7 AAC 127.045.

(Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11/5/2017, Register 224; am 10/1/2018, Register 227; am ____/____/____, Register ____)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.040

AS 47.07.030

7 AAC 130.270. is repealed and readopted to read:

7 AAC 130.270. Employment services. (a) The department will pay for employment services if those services are

(1) provided in accordance with the department's Employment Services Conditions of Participation, adopted by reference in 7 AAC 160.900;

(2) provided to a recipient in one of the following recipient categories:

(A) children with complex medical conditions;

(B) adults with physical and developmental disabilities;

(C) individuals with intellectual and developmental disabilities;

(3) provided to a recipient individually or as a member of a group of two to five recipients;

(4) approved under 7 AAC 130.217 as part of the recipient's support plan; if a recipient is under 22 years of age, the support plan must document that the employment services do not duplicate or supplant educational services for which a recipient is eligible under 4 AAC 52;

(5) planned, if self-employed, to earn an income that is comparable to the income received by other people who are not individuals with disabilities, who are self-employed in similar occupations or in similar tasks, and who have similar training, experience, and skills;

(6) in compliance with the Workforce Innovation Opportunity Act, Pub. L. No. 113 – 128, that limits the use of a subminimum wage;

(7) provided to the recipient because the recipient's disability requires intensive support and training to perform in a work setting;

(8) based on the recipient's abilities, interests, priorities and career goals, determined through a person-centered planning process that includes a review of the recipient's relevant medical, social, educational, and other records;

(9) provided in decreasing amounts over time, as the recipient meets the specific service outcomes and employment-related goals identified in the person-centered support plan;

(10) provided with the primary objective and expected outcome of gainful employment, as defined in AS 23.15.095, that

(A) occurs in an integrated workplace where recipients work with and alongside individuals without disabilities; and

(B) is paid at or above the minimum wage and not less than the compensation paid by the employer for the same or similar work performed by an individual who is not disabled;

(11) provided in a manner that protects the recipient's health, safety, and welfare;

(12) already authorized.

(b) The department will consider services to be pre-employment services if the services

(1) are provided to enable a recipient to achieve gainful employment as defined by AS 23.15.095;

(2) assist a recipient to develop general work readiness and non-specific strengths and skills;

(3) assist a recipient to determine their individual strengths, interests, abilities, skills, experiences, support needs, and information about conditions and employment settings optimal for the success of the recipient;

(4) are provided in the most integrated setting appropriate to the recipient's needs, and support full access to the greater community;

(5) assist a recipient in locating and securing gainful employment;

(6) support recipients who desire to become self-employed if the services

(A) assist a recipient to determine the business concept and developing a business plan;

(B) provide appropriate referral to community resources for additional guidance in identifying potential sources of business financing and other assistance available in developing and launching a business.

(c) The department will consider services to be supported employment services if the services

(1) provide systematic evidence-informed

(A) training and instruction for the recipient to learn and carry out their job duties subject to limitations described in (d)(1) of this section;

(B) direct support to assist the recipient to maintain gainful employment, prevent the loss of a job, or stabilize a recipient who had a change in job circumstances; or

(C) support for maximizing hours worked, pay, benefits, and opportunities for career advancement based on the recipient's abilities, interests, and priorities; and

(2) assist the recipient to accomplish work-related goals identified in a person-centered support plan, and decrease over time as goals are achieved;

(3) assist a recipient to become self-employed, for a recipient seeking self-employment, including subsistence activities, and the services

(A) identify the supports that are necessary for the recipient to operate the business; and

(B) provide ongoing assistance, counseling, and guidance after the recipient starts the business.

(d) The department will not pay for

(1) supervisory activities, or training provided to all employees at the workplace, or accommodations routinely provided by the employer to employees;

(2) services described in (b) of this section if a recipient simultaneously receives services under (c) of this section;

(3) more than three months of services under (b) of this section during a recipient's lifetime unless the provider of employment services demonstrates that the recipient

(A) needs additional preparation for employment related to a medical event that caused a significant decline in the recipient's abilities;

(B) needs to prepare for a new job that requires additional skills to advance the recipient's career; or

(C) was unable to complete pre-employment activities related to hospitalization or incarceration;

(4) an expense associated with starting up or operating a business;

(5) transportation for a recipient, unless it is to or from an employment site, and no other transportation is available for the recipient;

(6) a service that is available under a program funded under 20 U.S.C. 1400 - 1482 (Individuals with Disabilities Education Act) or 29 U.S.C. 730 (Rehabilitation Act); or

(7) expenses that include

(A) incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; and

(B) payments that are passed through to recipients of supported employment services;

(8) employment services that

(A) do not align with work-related goals identified in a recipient's person-centered support plan;

(B) are not planned to decrease over time;

(C) do not result in recipient goal achievement and progress towards employment independence; and

(D) are provided in residential settings unless a recipient is operating a home-based business (including subsistence).

(e) In this section, "subsistence" means a form of self-employment in which individuals use culturally relevant or traditional methods to produce goods or services for household consumption or non-commercial barter and trade that are important for the individual's livelihood. Subsistence occupations that are culturally relevant to American Indians or Alaska Natives may include the exchange of fish caught, or grain raised, by the individual with the disability for other goods produced by other members of the tribe that are needed by the individual to live and maintain his or her home. (Eff. 2/1/2010, Register 193; am 7/1/2013,

Register 206; am 7/1/2015, Register 214; am 10/1/2017, Register 223; am 11/5/2017, Register 224; am __/__/__, Register ____)

Authority: AS 23.15.095 AS 47.07.030 AS 47.07.040
AS 47.05.010

Chapter 160. Medicaid Program; General Provisions.

7 AAC 160.900. Requirements adopted by reference.

7 AAC 160.900(d)(49) is repealed and readopted to read:

(49) the Employment Services Conditions of Participation, dated December 9, 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, Register 218; am 6/16/2016, Register 218; am 7/22/2017, Register 223; am 11/5/2017, Register 224; am __/__/__, Register ____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.012