

Kevin Meyer  
Lieutenant Governor  
State Capitol  
Juneau, Alaska 99811  
907.465.3520  
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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:** June 25, 2021

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

Department of Health and Social Services regulations re: Medicaid coverage and payment for gender dysphoria-related services (7 AAC 105.110(12); 7 AAC 105.130(a)(21); 7 AAC 110.405(d)(5))

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Attorney General File:	2021200042
Regulation Filed:	6/25/2021
Effective Date:	7/25/2021
Print:	239, October 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 Gender Dysphoria-Related Services Medicaid Coverage, specifically, 7 AAC 105. Medicaid Provider & Recipient Participation; 7 AAC 110. Medicaid Coverage; Professional 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 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.

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

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: 2021.06.09 15:15:41 -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<sup>1</sup> on June 25,  
2021, at 1:36 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -  
44.62.120.

*for April Simpson*  
\_\_\_\_\_  
Lieutenant Governor *Kevin Meyer*

Effective:

July 25, 2021.

Register:

239, October 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**

((( Insert additional 0.5" tab )))

((( Move history note to next line down )))

7 AAC 105.110(12) is repealed:

→ (12) ~~Repealed~~ 7 / 25 / 2021 (Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 5/11/2012, Register 202; am 9/20/2015, Register 215; am 5/1/2016, Register 218; am 7 / 25 / 2021, Register 239)

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

7 AAC 105.130(a) is amended by adding a new paragraph to read:

(21) surgical procedures to alter a recipient's body to conform to <sup>the recipient's</sup> their gender identity.

(Eff. 2/1/2010, Register 193; am 10/1/2011, Register 199; am 3/19/2014, Register 209; am 7 / 25 / 2021, Register 239)

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

7 AAC 110.405(d)(5) is repealed:

(5) repealed 7 / 25 / 2021;  
(Eff. 2/1/2010, Register 193; am 6/13/2010, Register 194; am 8/25/2010, Register 195; am 5/1/2016, Register 218; am <sup>am 1/10/2021, Register 237;</sup> 7 / 25 / 2021, Register 239)

**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:** June 22, 2021

**File No.:** 2021200042

**Thru:** Susan R. Pollard Susan R Pollard Digitally signed by Susan R Pollard Date: 2021.06.22 13:52:46 -0800  
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 for gender dysphoria-related services (7 AAC 105.110(12); 7 AAC 105.130(a)(21); 7 AAC 110.405(d)(5))

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. As part of the settlement of federal litigation in *Being v. Crum*, the regulations repeal state Medicaid program exclusions on coverage and payment for gender dysphoria treatment, both hormonal and surgical.

*The agency has asked that these regulations be in effect as soon as possible, but in any event not later than August 1, 2021. Accordingly, we request that the regulations be filed as soon as possible, but not later than July 2, 2021.*

The February 12, 2021 public notice and the June 9, 2021 adoption order both state that this action is expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 has been prepared and is attached.

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

Renee Gayhart, Director  
Division of Health Care Services  
Department of Health and Social Services

Jamie Walker, Division Operations Manager  
Division of Health Care Services  
Department of Health and Social Services

Susan Miller Dunkin, Medicaid Program Coordinator  
Division of Health Care Services  
Department of Health and Social Services

Stacie L. Kraly, Chief Assistant Attorney General  
Human Services Section

NOTICE OF PROPOSED CHANGES ON GENDER DYSPHORIA-RELATED SERVICES MEDICAID 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 gender dysphoria-related services to implement the terms of a settlement agreement.

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, on Medicaid coverage for gender dysphoria-related services to implement the terms of a settlement agreement, including the following:

- **7 AAC 105. Medicaid Provider & Recipient Participation**, is proposed to be changed as follows:
  - **7 AAC 105.110. Noncovered services**. Repeal a paragraph related to excluding Medicaid coverage for gender dysphoria-related services.
  - **7 AAC 105.130. Services requiring prior authorization**. Amend to add a new paragraph related to Medicaid coverage for gender dysphoria-related services.
- **7 AAC 110.405. Medicaid Coverage; Professional Services**; 7 AAC 110. 405. Physician services coverage and limitations, are proposed to be changed as follows:
  - Repeal a paragraph related to excluding Medicaid coverage for gender dysphoria-related services.

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 Dunkin at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Suite 24, Attention: Susan Miler Dunkin, Anchorage, AK 99503-7167. Additionally, the Department of Health & Social Services will accept comments by electronic mail at [susan.dunkin@alaska.gov](mailto:susan.dunkin@alaska.gov). The comments must be received not later than 5 p.m. on March 24, 2021.

You may submit written questions relevant to the proposed action to Ms. Susan Dunkin by e-mail at [susan.dunkin@alaska.gov](mailto:susan.dunkin@alaska.gov) or at the Department of Health & Social Services, Division of Health Care Services, 4501 Business Park Blvd., Suite 24, Attention: Susan Miler Dunkin, Anchorage, AK 99503-7167. 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 to participate in this process, please contact Ms. Susan Miller Dunkin at [susan.dunkin@alaska.gov](mailto:susan.dunkin@alaska.gov) or at (907) 269-3638 not later than March 15, 2021, 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 Dunkin at [susan.dunkin@alaska.gov](mailto: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 47.07.030; 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:** It is estimated that the proposed regulation changes will require increased appropriations as follows: FY2021, \$28,000; FY2022, \$28,000; FY2023, \$28,000.

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](mailto:susan.dunkin@alaska.gov), giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

DATE: February 9, 2021.

/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: Gender Dysphoria-Related Services Medicaid Coverage, specifically, 7 AAC 105.110: Medicaid Provider & Recipient Participation; 7 AAC 110. Medicaid Coverage; Professional Services.
3. Citation of regulation (may be grouped): 7 AAC 105.110, .130; 7 AAC 110.405.
4. Department of Law file number, if any: 2021200042
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
  - (X) Other (identify): Compliance with Case No. 3:19-cv-00060-HRH stipulated settlement agreement and order.

6. Appropriation/Allocation: Medicaid Services/Medicaid Services

7. Estimated annual cost to comply with the proposed action to: None

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
Operating Cost	\$ _____	\$ _____
Capital Cost	\$ _____	\$ _____
1002 Federal receipts	\$72.0 _____	\$72.0 _____
1003 General fund match	\$28.0 _____	\$28.0 _____
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 change<sup>7</sup>
  - Other (identify): Department of Law

11. Date & Prepared by: Susan Miller Dunkin  
[e-signature]  
Name (printed): Susan Miller Dunkin  
Title (printed): Medicaid Program Specialist IV  
Telephone: (907) 269-3638
- Digitally signed by  
Susan Miller Dunkin  
Date: 2021.02.05  
16:31:22 -09'00'

**FISCAL NOTE**

Agency: Department of Health & Social Services

Appropriation/Allocation: Medicaid Services/Medicaid Services

General subject of regulation: Gender Dysphoria-Related Services Medicaid Coverage

Citation of regulation: 7 AAC 105.110, .130; 7 AAC 110.405.

Estimated appropriations required (in thousands of dollars) \$28.0

**Expenditures/Revenues**

	FY 2021 Appropriation Requested	(Thousands of Dollars)	
<b>OPERATING EXPENDITURES</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>
Personal Services			
Travel			
Services			
Commodities			
Capital Outlay			
Grants & Benefits	100.0	100.0	100.0
Miscellaneous			
<b>TOTAL OPERATING</b>			

<b>FUNDING SOURCE</b>		(Thousands of Dollars)		
1002	Federal Receipts	72.0	72.0	72.0
1003	GF Match	28.0	28.0	28.0
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>	<b>28.0</b>	<b>28.0</b>	<b>28.0</b>
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Date & Prepared by: Susan Miller Dunkin  
 (e-signature)  
 Susan Miller Dunkin, MPS IV  
 Department of Health & Social Services  
 Phone No.: (907) 269-3638

Digitally signed by Susan  
 Miller Dunkin  
 Date: 2021.02.05 17:56:38  
 -09'00'

# ANCHORAGE DAILY NEWS

## AFFIDAVIT OF PUBLICATION

Account #: 100871 ST OF AK/DHSS/COMMISSIONERS  
3601 C STREET STE 902, ANCHORAGE, AK 99503

Order #: W0020577

Cost: \$463.18

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

02/12/2021

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 16th day of February 2021.



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

MY COMMISSION EXPIRES

7/14/2024



### NOTICE OF PROPOSED CHANGES ON GENDER DYSPHORIA-RELATED SERVICES MEDICAID COVERAGE IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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

**Fiscal information:** It is estimated that the proposed regulation changes will require increased appropriations as follows: FY2021, \$28,000; FY2022, \$28,000; FY2023, \$28,000.

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DATE: February 9, 2021.  
/s/Adam Crum  
Commissioner,  
Department of Health & Social Services  
State of Alaska.

Published: February 12, 2021

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 Gender Dysphoria-Related Services Medicaid Coverage (7 AAC 105, 110), specifically, 7 AAC 105. Medicaid Provider & Recipient Participation; 7 AAC 110. Medicaid Coverage; Professional 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.

**Susan Miller  
Dunkin**

Digitally signed by Susan  
Miller Dunkin  
Date: 2021.03.26 15:03:50  
-08'00'

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

State of Alaska  
Anchorage, AK 99503

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 Gender Dysphoria-Related Services Medicaid Coverage (7 AAC 105, 110), specifically, 7 AAC 105. Medicaid Provider & Recipient Participation; 7 AAC 110. Medicaid Coverage; Professional 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.

Susan Miller Dunkin Digitally signed by Susan  
Miller Dunkin  
Date: 2021.03.26  
15:04:42 -08'00'

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

State of Alaska  
Anchorage, AK 99503.