

DEPARTMENT OF HEALTH & SOCIAL SERVICES



PROPOSED CHANGES TO REGULATIONS

Level-of-Care Determination for Community First Choice, Home and Community-Based Waiver Services, and Intermediate Care Facility for Individuals with Intellectual Disabilities.

- 7 AAC 127. Community First Choice Program.
- 7 AAC 130. Medicaid Coverage; Home and Community-Based Waiver Services.
- 7 AAC 140. Medicaid Coverage; Facility and Facility-Based Services.



PUBLIC REVIEW DRAFT December 6, 2021.

COMMENT PERIOD ENDS: January 25, 2022.

**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paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.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 127. Community First Choice Personal Care Services.**7 AAC 127.025. Eligibility and enrollment for Community First Choice services; level of care determination.**

7 AAC 127.025(f)(2) is amended to read:

(2) been assessed **or received an interim level-of-care review** under 7 AAC 127.030(f) or 7 AAC 130.213;

(Eff. 10/1/2018, Register 227; am 1/1/2021, Register 236; am ___/___/___, Register ____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 127.027. Disenrollment.

7 AAC 127.027(a)(2) is amended to read:

(2) the department is unable to determine eligibility for Community First Choice services because the documentation required for **assessment or interim level-of-care review** [REASSESSMENT] under 7 AAC 127.030(c) to determine the recipient's continuing eligibility for services was not submitted by the recipient, the recipient's representative, or the recipient's care coordinator at least 90 days before expiration of the current support plan;

(Eff. 10/1/2018, Register 227; am ____/____/____, Register _____)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.045
AS 47.07.030 AS 47.07.040

7 AAC 127.030. Application for Community First Choice services; authorization; reapplication and reauthorization.

7 AAC 127.030(c) is amended to read:

(c) A recipient that wishes to **continue to receive** [HAVE] Community First Choice services [REAUTHORIZED] must request **that** the recipient's care coordinator [TO] submit to the department a complete application not later than 90 days before the expiration of the recipient's current support plan.

7 AAC 127.030(f)(1) is amended to read:

(f) Not later than 30 business days after the department determines that an application is complete, and the application and supportive diagnostic documentation reasonably indicate the need for services described in 7 AAC 127.040, the department will

(1) conduct an assessment or **interim level-of-care review** [REASSESSMENT] to determine if the applicant meets the level-of-care eligibility requirements in 7 AAC 127.025;

7 AAC 127.030(f)(2) is amended to read:

(2) for an applicant that wants to receive Community First Choice personal care services, conduct an assessment [OR REASSESSMENT] of the individual. [; IN CONDUCTING THE ASSESSMENT OR REASSESSMENT, THE] **The** department will use

the Consumer Assessment Tool, adopted by reference in 7 AAC 160.900, to determine if the individual qualifies to receive Community First Choice personal care services; and

(Eff. 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 127.039. Support plan development and amendment.

7 AAC 127.039(a) is amended to read:

(a) Not less than once every 12 months, the care coordinator shall submit a support plan, based on the current needs of the recipient, the most recent assessment or **interim level-of care review** [REASSESSMENT] conducted under 7 AAC 127.030, and the level-of-care determination made in accordance with 7 AAC 127.025. After an assessment or reassessment under 7 AAC 127.030, and after receiving the department's notice that the recipient meets the level-of-care requirement under 7 AAC 127.025, the care coordinator shall

7 AAC 127.039(a)(3)(E)(i) is amended to read:

(i) the assessment or **interim level-of-care review** [REASSESSMENT] conducted under 7 AAC 127.030 and the level-of-care determination made in accordance with 7 AAC 127.025; and

(Eff. 10/1/2018, Register 227; am ____/____/____, Register _____)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.045
AS 47.07.030 AS 47.07.040

7 AAC 127.145. Reporting recipient changes.

7 AAC 127.145(c) is amended to read:

(c) Upon review of a report under (b) of this section, the department may conduct a new assessment **or interim level-of-care review** of a recipient if the department determines that **a new assessment or interim level-of-care review** [REASSESSMENT] is necessary to confirm the recipient's eligibility for Community First Choice services, need for services at the level of assistance currently approved for the recipient, or need for the activities specified in recipient's current service level authorization.

(Eff. 10/1/2018, Register 227; am 3/31/2021, Register 238; am __/__/__, Register ____)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.040
AS 47.07.030

7 AAC 127.990. Definitions.

7 AAC 127.990(3) is repealed and readopted to read:

(3) "assessment" means the process by which the department, using an assessment tool specified by recipient category in 7AAC 130.215, determines if an applicant meets a level of care necessary to qualify for home and community-based waiver services.

7 AAC 127.990 is amended by adding a new paragraph to read:

(16) "interim level-of-care review" means an evaluation of a recipient's most recent documents related to receiving home and community-based waiver services, including the contents of the most recent application, the results of the recipient's most recent assessment,

medical records, and other relevant documents or observation, to determine if an applicant meets a level of care necessary to continue to qualify for home and community-based waiver services;

(Eff. 10/1/2018, Register 227; am ____/____/____, Register _____)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.040

AS 47.07.030

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

The title of 7 AAC 130.213 is amended to read:

7 AAC 130.213. Assessment and interim level-of-care review [REASSESSMENT].

7 AAC 130.213(e) is repealed and readopted to read:

(e) For recipients enrolled in the recipient category specified in 7 AAC 130.205(d)(3), if the new application indicates a need for continuing services, the department will

(1) either

(A) assess the recipient to determine if the recipient continues to meet the eligibility requirements of 7 AAC 130.205(d)(3) and the level-of-care requirement under 7 AAC 130.215(3); the department will schedule an assessment on the basis of the age of the recipient or earlier if the department determines it necessary, as follows:

(i) annually for recipients at least three years of age and under seven years of age;

(ii) as necessary for recipients 7 years of age or older; or

(B) for each year an assessment is not conducted, conduct an interim level-of-care review and confer with the care coordinator for the recipient, to confirm that the

recipient continues to meet the level-of-care requirement; if the interim level-of-care review indicates that there has been a material change in the recipient's condition, the department will conduct an assessment; and

(2) after an assessment or interim level-of-care review under this subsection, notify the recipient, the recipient's representative, and the recipient's care coordinator of the department's determination.

7 AAC 130.213(f)(1) is amended to read:

(f) If the department finds, based on an assessment [A REASSESSMENT] under this section, that the recipient no longer requires the level of care described in 7 AAC 130.215, the department will

(1) forward the assessment [REASSESSMENT] for review by an independent qualified health care professional in accordance with AS 47.07.045(b) and 7 AAC 130.219(e)(4); and

7 AAC 130.213(g) is amended to read:

(g) If the department determines that translation services for a non-English speaking applicant or interpretation services for a deaf applicant are necessary for an assessment [OR REASSESSMENT] under this section, the department will secure and pay for those services.

7 AAC 130.213(h) is amended to read:

(h) The department may schedule and conduct an assessment [OR REASSESSMENT] by teleassessment for an applicant or recipient who submits to the department an application in

accordance with 7 AAC 130.207. If the department selects an applicant or recipient for a teleassessment, the department may request that the applicant or recipient provide information to the department about the residential setting of the applicant or recipient before the teleassessment is scheduled.

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11/5/2017, Register 224; am 3/31/2021, Register 238; am ____/____/____, Register _____)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

The title of 7 AAC 130.217 is repealed and readopted to read:

7 AAC 130.217. Support plan development and amendment.

7 AAC 130.217(a) is amended to read:

(a) Not less than once every 12 months, the care coordinator shall submit a support plan, based on the current needs of the recipient, the most recent assessment **or** [,] interim level-of-care review [, OR REASSESSMENT] conducted under 7 AAC 130.213, and the level-of-care determination made in accordance with 7 AAC 130.215. After an assessment **or** [,] interim level-of-care review [, OR REASSESSMENT] under 7 AAC 130.213, and after receiving the department's notice that the recipient meets the level-of-care requirement under 7 AAC 130.215, the care coordinator shall

...

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; 11/5/2017, Register 224; am 10/1/2018, Register 227; am 3/31/2021, Register 238; am ____/____/____, Register ____)

7 AAC 130.218. Person-centered practice.

7 AAC 130.218(c)(4)(C)(ii) is amended to read:

(ii) an analysis of whether the service and amount of that service is consistent with the assessment or **interim level-of-care review** [REASSESSMENT] conducted under 7 AAC 130.213, the level-of-care-determination made in accordance with 7 AAC 130.215, and any treatment plans developed for the recipient;

(Eff. 11/5/2017, Register 224; am 3/31/2021, Register 238; am ____/____/____, Register ____)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045

AS 47.07.030

7 AAC 130.219. Enrollment in home and community-based waiver services; disenrollment.

7 AAC 130.219(e)(4) is amended to read:

(4) the recipient is no longer eligible for services because the recipient's **assessment or interim level-of-care review** [REASSESSMENT], conducted in accordance with 7 AAC 130.213(c) - (f), indicates the condition that made the recipient eligible for services has materially improved since the previous assessment, and

...

(Eff. 7/1/2013, Register 206; am 7/1/2015, Register 214; am 11/5/2017, Register 224; am 3/31/2021, Register 238; am ____/____/____, Register ____)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045

AS 47.07.030

7 AAC 130.319. Definitions.

7 AAC 130.319 is amended by adding a new paragraph to read:

(22) “material change in condition” means an alteration in the applicant’s health, behavior, or functional capacity of sufficient significance that the department is likely to reach a different decision regarding the applicant’s need for home and community-based waiver services.

(Eff. 2/1/2010, Register 193; am 11/3/2012, Register 204; 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 10/1/2020, Register 235; am 3/31/2021, Register 238; am ____/____/____, Register ____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 140.600. ICF/IID enrollment and conditions for payment.

7 AAC 140.600(d) is repealed and readopted to read:

(d) Each condition identified in (c) of this section must

- (1) have originated before the age of 22 years;
- (2) be likely to continue indefinitely; and
- (3) constitute a substantial disability to the individual's ability to function in society, as measured by the Inventory for Client and Agency Planning (ICAP), adopted by reference in 7 AAC 160.900, or an assessment tool determined by the department to be a substantially similar appropriate alternative; and

(4) result in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, and for individuals over the age of 16, capacity for independent living and economic self-sufficiency.

(Eff. 2/1/2010, Register 193; am ____/____/____, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040