

Nancy Dahlstrom
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

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: December 23, 2022

RE: Filed Permanent Regulations: Department of Health

Department of Health regulations re: Division of Senior & Disabilities Services – Level-of-Care Determination for Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IDD) & Community First Choice (CFC) (7 AAC 127, 130, 140)

Attorney General File:	2021200496
Regulation Filed:	12/23/2022
Effective Date:	1/22/2023
Print:	245, April 2023

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF HEALTH.

The attached 9 pages of regulations, dealing with the Level-of-Care Determination for Community First Choice, Home & Community-Based Waiver, & Intermediate Care Facility for Individuals with Intellectual Disabilities Services, (7 AAC 127, 130, 140), are adopted and certified to be a correct copy of the regulation changes that the Department of Health adopts under the authority of AS 47.05.010, AS 47.07.030, AS 47.07.036, AS 47.07.040, and AS 47.07.045, 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 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: 2022.10.03 08:13:05
-08'00'

Adam Crum, Commissioner
Department of Health.

April Simpson
for Nancy Dahlstrom

FILING CERTIFICATION

I, *Kevin Meyer*, Lieutenant Governor for the State of Alaska, certify that¹ on *December 23,*
2022, at *10:00 a.m.,* I filed the attached regulations according to the provisions of AS 44.62.040 -
44.62.120.

April Simpson
for Lieutenant Governor *Nancy Dahlstrom*

Effective: *January 22, 2023*

Register: *245, April 2023.*

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, NANCY DAHLSTROM, 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, 2022.



Nancy Dahlstrom

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

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 1 / 22 / 2023, Register 245)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

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 **recipient, recipient's representative, or recipient's care coordinator did**

not submit 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 1 / 22 / 2023, Register 245)

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(c) is amended to read:

(c) A recipient **who** [THAT] wishes to **continue to receive** [HAVE] Community First Choice services [REAUTHORIZED] must request **that** the recipient's care coordinator [TO] submit a complete application **to the department** not later than 90 days before the expiration of **the period covered by the preceding level-of-care approval** [THE RECIPIENT'S CURRENT SUPPORT PLAN].

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

(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 who [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 1 / 22 / 2023, Register 245)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.040
AS 47.07.030

The introductory language of 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 interim level-of-care-review [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 1 / 22 / 2023, Register 245)

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(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 1 / 22 / 2023, Register 245)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.040
AS 47.07.030

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 7 AAC 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 1 / 22 / 2023 Register 245)

Authority: AS 47.05.010 AS 47.07.036 AS 47.07.040
AS 47.07.030

The section heading of 7 AAC 130.213 is changed to read:

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

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 based on 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 seven years of age or older; or

(B) conduct an interim level-of-care review for each year an assessment is not conducted 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) 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

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

(1) forward the assessment [OR 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 1 / 22 / 2023, Register 245)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

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 conducted under 7 AAC 130.213, the level-of-care-determination made in accordance with 7 AAC 130.215, and the [ANY] treatment plans, if any, developed for the recipient;

(Eff. 11/5/2017, Register 224; am 3/31/2021, Register 238; am 1 / 22 / 2023, Register 245)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

The introductory language of 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[OR 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 1/22/2023 Register 245)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

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

(23) “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 9/18/2022, Register 243; am

1/22/2023, Register 245)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 140.600(d)(3) is repealed and readopted to read:

(3) constitute a substantial disability to the individual's ability to function in society,

(A) as measured by the *Inventory for Client and Agency Planning (ICAP)*, adopted by reference in 7 AAC 160.900, and as evidenced by a broad independence domain score equal to or less than the cutoff scores in the department's *Table of ICAP Scores by Age*, adopted by reference in 7 AAC 160.900; or

(B) for a recipient receiving services in an ICF/IID in another state, as measured by the assessment tool authorized for use in that state.

(Eff. 2/1/2010, Register 193; am 1 / 22 / 2023 Register 245)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040