

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: Victoria Caltagirone
Department of Commerce, Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor
465.4081 

DATE: July 17, 2023

RE: Filed Permanent Regulations: Division of Insurance

Department of Commerce, Community, and Economic Development - Division of Insurance regulations re: Basis of Payment for Health Care Services or Supplies (3 AAC 26.110)

Attorney General File:	2023200028
Regulation Filed:	7/17/2023
Effective Date:	1/1/2024
Print:	248, January 2024

cc with enclosures: Colleen Bailey, Department of Law
Judy Herndon, LexisNexis
Heather Carpenter, Deputy Director
Lieann Amante, Regulations Specialist 2



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Law

CIVIL DIVISION

P.O. Box 110300
Juneau, Alaska 99811
Main: 907.465.3600
Fax: 907.465.2520

July 14, 2023

The Honorable Nancy Dahlstrom
Lieutenant Governor
State of Alaska
P.O. Box 110015
Juneau, AK 99811-0015

Re: *3 AAC 26.110: DCCED Div. of Insurance - Basis of Payment for Health Care Services or Supplies*

Our file: 2023200028

Dear Lieutenant Governor Dahlstrom:

The Department of Law has reviewed the attached regulations of the Department of Commerce, Community and Economic Development, Division of Insurance against the statutory standards of the Administrative Procedure Act. Based upon our review, we find no legal problems. This letter 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 concern the repeal of what is known as the "80th percentile" for health insurance providers. Under the prior regulation, health insurance providers were required to pay out-of-network medical providers at least the 80th percentile for services rendered. Based on the recent enactment of new federal laws related to medical billing, the consumer protection purpose of the 80th percentile rule is no longer necessary.

The regulations were adopted by the Division of Insurance after the close of the public comment period. The January 29, 2023, public notice and the June 20, 2023, 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.

We have made some technical corrections necessary to conform the regulations in accordance with AS 44.62.060. The corrections are incorporated into the attached copy of the regulations.

Sincerely,

TREG TAYLOR
ATTORNEY GENERAL

By: **Rebecca C. Polizzotto**
Digitally signed by
Rebecca C. Polizzotto
Date: 2023.07.14
12:16:12 -08'00'

Rebecca C. Polizzotto
Chief Assistant Attorney General
Legislation, Regulations, and
Legislative Research Section

RCP/kmd

CC w/enclosure: Lieann Amante, Regulations Specialist 2
Department of Commerce, Community and Economic Development
Division of Insurance

Daniel Wilkerson, Assistant Attorney General
Department of Law

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DIVISION OF INSURANCE

The attached 3 pages of regulations regarding Repeal of the 80th Percentile Regulation, are adopted and certified to be a correct copy of the regulation changes that the Division of Insurance adopts under the authority of AS 21.06.090; AS 21.36.495; AS 21.42.205 and AS 21.36.125; 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 Division of Insurance paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on January 1, 2024, as provided in AS 44.62.180.

DATED this 20th day of June, 2023.



Lori Wing-Heier, Director
Division of Insurance
Department of Commerce, Community, and
Economic Development

April Simpson for
↙

FILING CERTIFICATION

I, Nancy Dahlstrom, Lieutenant Governor for the State of Alaska, certify that on

July 17, 2023, at 3:50 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for David Spivey
Lieutenant Governor Nancy Dahlstrom

Effective January 1, 2024

Register 248, January 2024

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:

April Simpson, Regulations and Initiatives Specialist

IN TESTIMONY WHEREOF, I have signed and affixed the Seal of the State of Alaska, in Juneau, on May 15th, 2023.



A handwritten signature in blue ink, reading "Nancy Dahlstrom", is written over a horizontal dotted line.

**NANCY DAHLSTROM
LIEUTENANT GOVERNOR**

3AAC 26.110(a) is amended to read:

(a) A person who [THAT] provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall

(1) [MAINTAIN OR USE A STATISTICALLY CREDIBLE PROFILE OF COVERED HEALTH CARE SERVICES AND SUPPLIES ON WHICH TO BASE PAYMENT; THE PROFILE MUST

(A) BE UPDATED AT LEAST EVERY SIX MONTHS;

(B) CONTAIN BILLED CHARGES FOR SERVICES PERFORMED NOT MORE THAN ONE YEAR BEFORE THE DATE OF THE MOST RECENT PROFILE; AND

(C) CONTAIN BILLED CHARGES FOR EACH GEOGRAPHICAL AREA IN WHICH A CLAIMANT MIGHT RECEIVE TREATMENT OR, IF STATISTICALLY CREDIBLE DATA FOR A PARTICULAR SERVICE OR SUPPLY ITEM IN A CERTAIN GEOGRAPHICAL AREA IS UNAVAILABLE, CONTAIN A SUFFICIENT NUMBER OF BILLED CHARGES FOR THAT SERVICE OR SUPPLY ITEM FROM ANOTHER GEOGRAPHICAL AREA SO THAT A RELIABLE BASIS IS ESTABLISHED;

(2) EXCEPT AS PROVIDED IN (3) OF THIS SUBSECTION, DETERMINE THE FINAL PAYMENT FOR A COVERED SERVICE OR SUPPLY BASED ON AN AMOUNT THAT

(A) REFLECTS THE GENERAL COST DIFFERENCES BETWEEN THE GEOGRAPHICAL AREA WHERE THE SERVICE WAS PERFORMED AND THE OTHER GEOGRAPHICAL AREAS USED IN ESTABLISHING THE STATISTICALLY CREDIBLE PROFILE UNDER (1) OF THIS SUBSECTION; AND

(B) IS EQUAL TO OR GREATER THAN THE 80TH PERCENTILE OF CHARGES UNDER (1) OF THIS SUBSECTION FOR THE HEALTH CARE SERVICES OR SUPPLIES;

(3)] for a vaccine covered by an insurance policy that is an included vaccine and purchased by a provider instead of obtained from the state under the statewide immunization program established under AS 18.09.200, determine the final payment for the covered vaccine at an amount equal to or greater than the cost of the state-purchased [STATE PURCHASED] vaccine under the statewide immunization program; in this paragraph, "included vaccine" has the meaning given in AS 18.09.990;

(2) [(4)] provide an explanation of the basis of payments in clear and simple terms with any claim payment [AN EXPLANATION OF THE BASIS OF PAYMENTS IN CLEAR AND SIMPLE TERMS, INCLUDING EXPLANATION OF ANY ADJUSTMENTS MADE UNDER (2)(A) OF THIS SUBSECTION,] and document the provided explanation [PROVIDED] in the claim file; and

(3) [(5)] provide an explanation of the basis of payments in the health insurance policy [OF THE BASIS OF PAYMENTS], including any payments for which a covered individual may be responsible, and include on any schedule or summary of benefits page accompanying the policy

Register 248, January ²⁰²⁴ ~~2023~~ COMMERCE, COMMUNITY, AND EC. DEV.

[(A) THE PERCENTILE USED TO DETERMINE FINAL PAYMENT UNDER (2)(B) OF THIS SUBSECTION; AND

(B)] a statement regarding whether the covered individual is responsible for any amount billed for a health care service or supply item that exceeds the final payment.

(Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 1/2/98, Register 145; am 9/15/2004, Register 171; am 10/16/2011, Register 200; am 12/16/2015, Register 216; am 8/20/2016, Register 219; am 1 / 1 / 2024, Register 248)

Authority: AS 21.06.090 AS 21.36.495 AS 21.42.205
AS 21.36.125