

DEPARTMENT OF HEALTH & SOCIAL SERVICES



PROPOSED CHANGES TO REGULATIONS

7 AAC 130. MEDICAID COVERAGE; HOME & COMMUNITY-BASED WAIVER SERVICES. DAY HABILITATION SERVICES AMENDMENTS.

- 7 AAC 130.260. Day habilitation services.
- 7 AAC 130.319. Definitions.

7 AAC 160. MEDICAID PROGRAM; GENERAL PROVISIONS.

- 7 AAC 160.900. Requirements adopted by reference.



PUBLIC REVIEW DRAFT

August 7, 2019

COMMENT PERIOD ENDS: September 30, 2019

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or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.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

Title 7 Health and Social Services.

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

7 AAC 130.260. Day habilitation services.

7 AAC 130.260(a)(3) is amended to read:

(a) The department will pay for day habilitation services that

...

(3) are approved under 7 AAC 130.217 and 7 AAC 130.218 as part of the

recipient's **support** plan [OF CARE]; and

7 AAC 130.260(b) is repealed and readopted to read:

(b) The department will consider habilitation services to be day habilitation services if the services

(1) are provided in a nonresidential setting, separate from the recipient's private residence or another residential setting, to a recipient individually or as a member of a group;

(2) include round-trip transportation for the recipient between the recipient's residence and the site where services are provided unless the recipient's support plan reflects that other transportation will be provided;

(3) provide active teaching or training that assists the recipient to acquire, retain, or improve skills related to self-help, socialization, appropriate behavior, and adaptation, and does one or more of the following:

(A) promotes the development of the skills needed for independence, autonomy, and full integration into the community;

(B) reinforces the skills taught in school, therapy, or other settings;

(C) retains, for a recipient with a degenerative condition, skills and functioning to prevent or slow regression of that condition;

(4) do not duplicate or replace services that are the responsibility of a residential habilitation services provider under 7 AAC 130.265, a supported employment services provider under 7 AAC 130.270, a respite services provider under 7 AAC 130.280, or a personal care services provider under 7 AAC 125 or 7 AAC 127;

(5) do not

(A) replace, enhance, or supplement educational services for which the recipient is eligible under 20 U.S.C. 1400 -1482, (Individuals with Disabilities Education Act), or 29 U.S.C. 730 (Rehabilitation Act);

(B) provide only companionship for or supervision of a recipient; or

(C) displace activities or opportunities that natural supports would typically provide;

(6) for each recipient, provides

(A) active teaching or training based on goals that are relevant to the recipient, outcome-based, and have a defined purpose of developing or retaining skills and functioning identified as necessary for community integration;

(B) activities based on that recipient's needs, abilities, and interests identified through a person-centered planning process that includes review of relevant assessments;

(C) the least restrictive learning environment appropriate for that recipient to participate in activities in a non-simulated community setting; and

(D) opportunities that promote connections to natural supports among members of the greater community.

7 AAC 130.260(c) is repealed and readopted to read:

(c) The department will pay for a maximum of 624 hours per year of any type of day habilitation services from all providers combined, unless the department determines that the recipient's current physical or behavioral condition places the recipient at risk of institutionalization or incarceration if additional hours are not provided. The department may approve a limited number of additional hours for day habilitation services if

(1) the department finds that

(A) the recipient's support plan and records indicate that the recipient has a critical need for additional hours for day habilitation services because of one or more of the following reasons:

(i) the recipient has an acute or degenerative physical condition that necessitates participation in activities to maintain or improve that condition and that are available only in the community;

(ii) the recipient exhibits behaviors that create a risk of physical harm to the recipient or others that can be mitigated only by the development of skills related to appropriate behavior in the community;

(iii) the recipient needs to learn skills required for living successfully in the community because of termination of one-to one support provided under 7 AAC 130.267; or

(iv) the recipient's recent or imminent release from an intermediate care facility for individuals with intellectual disabilities or the criminal justice system increase the need for additional time for teaching or training skills for community integration; and

(B) the recipient's medical, social, educational records, including the following, support the recipient's need for, and capacity to engage in and benefit from, additional active training or teaching:

(i) the current and prior year assessments under 7 AAC 130.209;

(ii) the current and prior year support plans;

(iii) records maintained under 7 AAC 105.230(d);

(iv) case notes;

(2) the request for additional time is submitted in a recipient's support plan that

(A) describes how the recipient's physical or behavioral condition and one or more of the circumstances in (1)(A) of this subsection justify additional time;

(B) identifies goals related to the skills specified in (b)(3) of this section and explains why additional time in a day habilitation setting is necessary to reach the recipient’s goals;

(C) lists interventions used or in use to address the recipient’s condition and whether each intervention was successful or unsuccessful; and

(D) indicates how additional time will not duplicate or supplant other services requested in the recipient’s support plan.

7 AAC 130.260 is amended by adding a new subsection to read:

(e) In this section, “critical need” means the condition resulting from the recipient’s circumstances that would result in institutionalization within 30 days if additional time is not approved; “limited amount of additional time” means the time that exceeds 624 hours in a plan year that the department determines a recipient can reasonably be expected to engage in and benefit from active training or teaching, given that recipient’s physical or behavioral condition. (Eff. 2/1/2010, Register 193; am 7/1/2013, Register 206; am 10/1/2017, Register 223; am 11/5/2017, Register 224; am____/____/____, Register____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 130.319. Definitions.

7 AAC 130.319(6) is repealed:

(6) repealed ____/____/____;

(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____/____/____, Register____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

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

(17) “active teaching or training” means the use of evidence-based practices and appropriate measures or interventions that address objectives described in a recipient’s approved support plan and that engage a recipient during each unit of service;

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

(18) “habilitation” means active teaching or training that

- (A) assists a recipient to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings; and
- (B) is planned for the purpose of increasing the physical, mental, and social functioning of the recipient to a level comparable to that of the recipient’s peers;

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

(19) “residential habilitation” means habilitation provided in a location that is

- (A) a recipient’s private residence; or
- (B) a facility licensed under AS 47.32 that provides
 - (i) a structured setting with supervision and care;
 - (ii) shelter, food, household maintenance, and transportation;

(iii) encouragement, assistance, and guidance as necessary with activities of daily living;

(iv) social and recreational activities and opportunities both in the home and in the community; and

(v) arrangements for medical services if the need is indicated in the recipient’s medical records.

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

(20) “risk of institutionalization” means it is likely that the recipient’s current condition would require the recipient to be relocated, within 30 days, from the recipient’s current residence to an acute care hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities.

(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____/____/____, Register____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

Chapter 160. Medicaid Program; General Provisions.

7 AAC 160.900. Requirements adopted by reference.

7 AAC 160.900(d)(36) is amended to read:

(36) the *Day Habilitation Services Conditions of Participation*, dated August 7, 2019, [SEPTEMBER 5, 2017];

(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 3/1/2018, Register 225; am 10/1/2018, Register 227; am 1/1/2019, Register 228; am 3/24/2019, Register 229; am_____/_____/_____, Register_____))

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040
AS 47.05.012