



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

## Department of Health and Social Services

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March 23, 2021

The Honorable Click Bishop  
Co-Chair, Senate Finance Committee  
Alaska State Senate  
Alaska State Capitol Room  
Juneau, AK 99801

The Honorable Bert Stedman  
Co-Chair, Senate Finance Committee  
Alaska State Senate  
Alaska State Capitol Room  
Juneau, AK 99801

Dear Senator Bishop and Senator Stedman:

This letter presents responses to the Senate Finance Committee member questions received by the Department of Health and Social Services (DHSS) at the Wednesday, March 24 hearing on SB 56 Extending COVID-19 Disaster Emergency.

***Senator Wilson - Please discuss the legality of vaccine passports – is it legal for businesses and government entities to require vaccine passports (not only for travel, but also for entry into business, offices, etc.).***

The following response was prepared by the Department of Law.

To provide context to this response, we want to be clear that the concept of a “vaccination passport” is not solely tied to travel, rather the term is used in a more global sense. The concept encompasses the idea that once issued, this document can be used in a number of ways to provide verification that an individual has been vaccinated. This could include a private business’ requirement to verify someone has been vaccinated before entering a sporting event, an individual or church’s requirement of verifying vaccination before attendance at a wedding, or a requirement before accessing a gym or a restaurant.

Additionally, there is a current question of whether a government can require someone to get a vaccine that is not yet Food and Drug Administration (FDA) approved, but instead is authorized under an Emergency Use Authorization (EUA). It is not clear whether this same issue arises in the context of the private sector. It appears that before a government can “require” the vaccination it must be approved and not being administered under a EUA. That said, these vaccines are expected to receive full FDA approval in due course, and potentially much more quickly than most vaccines because of the extensive testing and the use of the vaccine that has occurred in the past few months.

With those two points in mind, the Department of Law offers the following:

Private businesses have broad latitude to set the rules on access to their places of business subject to certain state, local and federal laws, of which civil rights laws requiring that private businesses not engage in unlawful discrimination are a primary example. Thus, private businesses can take some actions to restrict access to their stores or businesses based on vaccination status in general, but that authority of a private business might be limited in cases in which individuals have medical or religious reasons, for example, for not being vaccinated. A gym, for example, may be able to provide specific hours (and possibly more favorable hours) for individuals who are vaccinated versus those who are not. A very similar analysis happens with respect to governmental restrictions or rules. The ability to require vaccinations by government entities already exists with respect to public school attendance and possibly in other congregate settings, or work environments. However, to be clear, these requirements are not policy directives - they must be adopted as law and in these instances would require approval by the Alaska Legislature. The Administration could not implement any such requirement without legislative approval or delegation. Like with businesses, there must be reasonable accommodations made for persons who cannot be vaccinated for health reasons or who object on very specific and delineated grounds (usually set out in statutes or ordinances).

Additionally, with respect to any vaccine passport requirement for travel or for access to governmental or private business services, jobs or programs, those rules must be balanced to the person's constitutional rights. Given the infringement on individual liberty, the constitutional right to travel and right to privacy would be primary concerns. In addition to the reasonable accommodation requirements noted above for a person who cannot or who chooses not to get vaccinated for qualifying reasons, these constitutional considerations would need to be factored into any review of any specific requirements related to vaccinations and would require an evaluation of facts such as the specific current nature of the existing public health threat and the ability of the government or business to take other less intrusive actions to mitigate that threat.

***Senator Wielechowski: When do we (legislature) have to pass something so that the EA SNAP Benefits are not delayed in getting to individuals?***

The Division of Public Assistance (DPA) has submitted its request for emergency allotments (EAs) to the federal Food and Nutrition Service (FNS) for the month of April. The division understands that a state emergency declaration or another authority related to a public health emergency response to COVID-19, be in place for at least one day during the month, to allow Alaska to issue EAs for the entire month. The division *plans* to issue EA benefits starting the first day of the following month. For example, on May 1, the division would usually issue the April EA.

The division will issue EAs as soon as eligibility technicians process cases, which can happen in advance of a month. If the division has approval from FNS to authorize EAs, it may be able to issue the benefit within the month it's approved by FNS. Regular processing occurs within a standard 10-day timeline, beginning on the first of the month. The division's research team produces a report to identify households that are not receiving the maximum possible benefit, and field staff are tasked to issue EA supplements manually on a case-by-case basis.

***Senator Bishop: What is the average SNAP benefit paid? What is the average EA paid per month? Please provide a low, medium, and high scenario for each of these.***

In February 2021, the average SNAP benefit was:

- Per Person: \$213.08
- Per Household: \$506.11

The average EA supplement per household was \$282.94 in February 2021.

Taking into account regional differences, individual household supplements have ranged from a low of \$1.00 and as high as \$2938.00.

***Senator Wielechowski: How many individuals will be eligible for EA Benefits in April?***

FNS' emergency allotment authorizes the state to issue a maximum benefit regardless of an individual's countable income. Therefore, the division must review all cases each month when an EA supplement is authorized to determine who will receive a benefit and for how much, which is applied on a case-by-case basis.

The division is unable to forecast the number of SNAP recipients who will be eligible in April to receive the EA supplement. In February, the division provided an EA supplement to 34,918 households. Data is not yet available for March.

***Senator Wilson (as follow up): Can the department describe how EA recipients are notified that this a monthly benefit, in addition to the regular SNAP benefit, and that it is determined on a month-to-month basis?***

Although notices are not required by federal regulation since the EA supplement affects a blanket change for all recipients, the division sent a letter to all recipients at the time that the disaster declaration was made indicating that SNAP benefits would be extended, and other communications have been made about the EA supplement through the department and partner agencies.

Sincerely,



Adam Crum  
Commissioner

Page 4

Senate Finance Committee Follow Up

March 30, 2021

CC:           The Honorable David Wilson, Alaska State Senate  
              The Honorable Lyman Hoffman, Alaska State Senate  
              The Honorable Natasha von Imhof, Alaska State Senate  
              The Honorable Bill Wielechowski, Alaska State Senate  
              The Honorable Donny Olson, Alaska State Senate  
              The Honorable Treg Taylor, Attorney General Designee, Department of Law  
              Mr. Al Wall, Deputy Commissioner, Department of Health and Social Services  
              Mr. Miles Baker, Legislative Director, Office of Governor Mike Dunleavy