DEPARTMENT OF HEALTH AND SOCIAL SERVICES

PROPOSED CHANGES TO REGULATIONS

Medicaid Coverage and Payment.

Home and Community-Based Waiver Services, Rates, and Personal Care Services

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PUBLIC REVIEW DRAFT

August 23, 2013

COMMENT PERIOD EXTENDED to November 1, 2013

Please see public notice for details about how to comment on these proposed changes.

7 AAC 145.520 is amended to read:

7 AAC 145.520. Home and community-based waiver services payment rates. (a) The department will pay a home and community-based waiver services provider in accordance with the rates and methodologies set out in this section.

(b) For care coordination services provided under 7 AAC 130.240, the department will pay a unit of service **in accordance with (f) of this section** [AT THE LESSER OF THE

(1) AMOUNT CHARGED BY THE PROVIDER TO THE PUBLIC; OR

(2) RATES ESTABLISHED IN THE DEPARTMENT'S *CHART OF PERSONAL CARE ATTENDANT AND WAIVER SERVICES RATES*, ADOPTED BY REFERENCE IN 7 AAC 160.900].

(c) For specialized medical equipment and supplies provided under 7 AAC 130.305, the department will pay at the lesser of the

(1) amount charged by the provider in accordance with 7 AAC 145.020; or

(2) the maximum allowable amount specified for that item in the *Specialized Medical Equipment Fee Schedule*, adopted by reference in 7 AAC 160.900.

(d) For specialized private duty nursing services provided under 7 AAC 130.285, the department will pay a unit of service at the lesser of the

(1) amount charged by the provider in accordance with 7 AAC 145.020; or

(2) the rate described in 7 AAC 145.250.

(e) For environmental modification services provided under 7 AAC 130.300, the department will pay at 100 percent of billed charges to a home and community-based waiver services provider that oversees the purchase and installation of an environmental modification for a recipient. In addition, the department will pay the provider an administrative fee of two percent of the billed charges or $100, whichever is greater, if the provider is

(1) certified under 7 AAC 130.220(b) (1)(K); and

(2) an organized health care delivery system under 42 C.F.R. Part 447.

(f) For **nursing oversight and care management services provided under 7 AAC 130.235, care coordination services provided for under 7 AAC 130.240,** chore services provided under 7 AAC 130.245, adult day services provided under 7 AAC 130.250, residential supported-living services provided under 7 AAC 130.255, day habilitation services provided under 7 AAC 130.260, residential habilitation services provided under 7 AAC 130.265, supported-employment services provided under 7 AAC 130.270, intensive active treatment services provided under 7 AAC 130.275, respite care services provided under 7 AAC 130.280, transportation services provided under 7 AAC 130.290(a) , or meals services provided under 7 AAC 130.295, the department will pay a unit of service at the lesser of

(1) rates established in the department's *Chart of Personal Care Attendant and Waiver Services Rates*, adopted by reference in 7 AAC 160.900; those rates will be

[(A)] adjusted in accordance with (g) of this section[, EXCEPT AS PROVIDED IN (i) OF THIS SECTION FOR A RATE DESCRIBED IN (h)(1) OF THIS SECTION; AND

(B) ADJUSTED IN ACCORDANCE WITH (h) OF THIS SECTION,

FOR SERVICES OTHER THAN INTENSIVE ACTIVE TREATMENT SERVICES]; or

(2) the amount charged by the provider in accordance with 7 AAC 145.020.

(g) Each July 1, rates established in the *Chart of Personal Care Attendant and Waiver Services Rates* will be adjusted as follows:

(1) the department will first adjust the rates for inflation, using the CMS Home Health Agency Market Basket in the most recent quarterly publication of Global Insight's *Healthcare Cost Review* available 60 days before July 1;

(2) after adjusting the rates for inflation, the department will further adjust them to reflect regional differences in the cost of doing business based on the designated planning regions described in Table I-I of the *Alaska Geographic Differential Study 2008*, dated April 30, 2009 and adopted by reference in 7 AAC 160.900, with a factor of 1.00 being the lowest factor applied and with the four southeast regional factors being averaged to a single weighted applicable factor of 1.09.

(h) Repealed ___/___/2013[FOR THE TYPES OF SERVICE LISTED IN (f) OF THIS SECTION, OTHER THAN INTENSIVE ACTIVE TREATMENT SERVICES PROVIDED UNDER 7 AAC 130.275,

(1) IF THE PROVIDER'S AVERAGE PER-UNIT ALLOWED AMOUNT FOR THE TYPE OF SERVICE, FOR CLAIMS WITH DATES OF SERVICE AFTER JUNE 30, 2009 AND BEFORE OCTOBER 1, 2009, AND PROCESSED BEFORE FEBRUARY 3, 2010, IS HIGHER THAN THE RATE ESTABLISHED UNDER (F) OF THIS SECTION, THE RECIPIENT CARE RATE BEFORE JANUARY 1, 2014 IS THE AVERAGE PER-UNIT ALLOWED AMOUNT FOR THE PERIOD AFTER JUNE 30, 2009 AND BEFORE OCTOBER 1, 2009;

(2) IF THE PROVIDER'S AVERAGE PER-UNIT ALLOWED AMOUNT FOR THE TYPE OF SERVICE, FOR CLAIMS WITH DATES OF SERVICE AFTER JUNE 30, 2009 AND BEFORE OCTOBER 1, 2009, AND PROCESSED BEFORE FEBRUARY 3, 2010, IS LOWER THAN THE RATE ESTABLISHED UNDER (f) OF THIS SECTION, THE RECIPIENT CARE RATE WILL BE CALCULATED AS FOLLOWS:

(A) BEFORE JULY 1, 2011, THE SERVICE WILL BE PAID AT A RATE CALCULATED AS 75 PERCENT OF THE AVERAGE ALLOWED AMOUNT FOR CLAIMS WITH DATES OF SERVICE AFTER JUNE 30, 2009 AND BEFORE OCTOBER 1, 2009 THAT WERE PROCESSED BEFORE FEBRUARY 3, 2010, PLUS 25 PERCENT OF THE RATE ESTABLISHED UNDER (f) OF THIS SECTION;

(B) AFTER JUNE 30, 2011 AND BEFORE JULY 1, 2012, THE SERVICE WILL BE PAID AT A RATE CALCULATED AS 50 PERCENT OF THE AVERAGE ALLOWED AMOUNT FOR CLAIMS WITH DATES OF SERVICE AFTER JUNE 30, 2009 AND BEFORE OCTOBER 1, 2009 THAT WERE PROCESSED BEFORE FEBRUARY 3, 2010, PLUS 50 PERCENT OF THE RATE ESTABLISHED UNDER (f) OF THIS SECTION;

(C) AFTER JUNE 30, 2012 AND BEFORE JULY 1, 2013, THE SERVICE WILL BE PAID AT A RATE CALCULATED AS 25 PERCENT OF THE AVERAGE ALLOWED AMOUNT FOR CLAIMS WITH DATES OF SERVICE

AFTER JUNE 30, 2009 AND BEFORE OCTOBER 1, 2009 THAT WERE PROCESSED BEFORE FEBRUARY 3, 2010, PLUS 75 PERCENT OF THE RATE ESTABLISHED UNDER (f) OF THIS SECTION;

(D) AFTER JUNE 30, 2013, THE SERVICE WILL BE PAID AT THE AMOUNT ESTABLISHED UNDER (f) AND (j) OF THIS SECTION].

(i) Repealed ___/___/2013 [A RATE ESTABLISHED UNDER (h)(1) OF THIS SECTION WILL NOT BE ADJUSTED UNDER (g) OF THIS SECTION UNTIL THE RATE IS RE-ESTABLISHED IN ACCORDANCE WITH (j) OF THIS SECTION. AFTER THE RATE IS REESTABLISHED, IT WILL BE ADJUSTED IN ACCORDANCE WITH (g) OF THIS SECTION. THE PORTION OF A RATE ESTABLISHED UNDER (h)(2) OF THIS SECTION THAT IS BASED ON (f) OF THIS SECTION WILL BE ADJUSTED IN ACCORDANCE WITH (g) OF THIS SECTION].

(j) [ON OR AFTER JANUARY 1, 2014, RATES] **Rates** of payment established in the *Chart of Personal Care Attendant and Waiver Service Rates*, as adjusted under (g) of this section, and except as provided in (k) of this section, will be re-established at least every four years based on the requirements of 7 AAC 145.531 - 7 AAC 145.537, and the results of provider cost surveys submitted in accordance with 7 AAC 145.533 - 7 AAC 145.537, [USING COST SURVEY COSTS FROM THE PROVIDER'S FIRST FISCAL YEAR BEGINNING ON OR AFTER JANUARY 1, 2011,] with the cost surveys due to the department nine months after the end of the provider's fiscal year. In determining per diem payment rates under this subsection, the cost of room and board **for group home habilitation and supported living services** will be removed from cost survey costs at **the time of rebasing at an amount determined by multiplying total utilized bed days by the current maximum monthly Federal Supplemental Security Income benefit amount for individuals under 42 U.S.C. 1381-1382 and 20 C.F.R. 416.401 divided by 30 days** [$40 PER DAY].

(k) Cost survey information submitted by state-owned and operated providers for residential supported-living services provided under 7 AAC 130.255 will be used solely to reestablish rates for state-owned and operated providers for residential supported-living services provided under 7 AAC 130.255.

(*l*) If a provider does not submit a complete annual report in accordance with the requirements of 7 AAC 145.531 - 7 AAC 145.537 on or before the due date of the report, and

(1) received less than $200,000 in Medicaid payments during the report year,

(A) the department will consider the provider to have exercised the option under 7 AAC 145.535(b) not to comply with the requirements of 7 AAC 145.531 and 7 AAC 145.535;

(B) the department will reduce the payment rate to the provider by 10 percent, effective 30 days after the due date, if an audited financial statement is not provided in accordance with 7 AAC 145.531(e) (2), with the payment reduction remaining in effect until **an** [A COMPLETE] annual report is received in accordance with 7 AAC 145.531(e) ;

(C) the department will reduce the payment rate to the provider by an additional 10 percent, effective 30 days after the due date, if a working trial balance and

documents required under 7 AAC 145.531(e) (1), (4), or (5) are not provided, with the payment reduction remaining in effect until **an** [A COMPLETE] annual report is received in accordance with 7 AAC 145.531(e) ; and

(D) the provider is not subject to removal from the Medicaid program for exercising the option under 7 AAC 145.535(b) ;

(2) received $200,000 or more in Medicaid payments during the report year,

(A) the department will reduce the payment rate to the provider by 20 percent, effective 30 days after the report is due, with the payment reduction remaining in effect until a complete annual report is received in accordance with 7 AAC 145.531(e) ; and

(B) the provider is subject to removal from the Medicaid program in accordance with 7 AAC 145.531(a) .

(m) A qualified recipient receiving residential supported-living services under 7 AAC 130.255 that are assigned procedure code T2031 in the *Healthcare Common Procedure Coding System (HCPCS)*, adopted by reference in 7 AAC 160.900, or group-home habilitation services under 7 AAC 130.265 that are assigned procedure code T2016 in the *Healthcare Common Procedure Coding System*, is eligible for, in addition to the qualified recipient's daily rate provided for under (f)[AND (h)] of this section, an acuity rate at the daily rate established in the department's *Chart of Personal Care and Waiver Services Rates*, adopted by reference in 7 AAC 160.900 and adjusted as set out in (g) of this section. For purposes of this subsection, a qualified recipient is a recipient for whom the department has given prior authorization under 7 AAC 130.267 for additional services.

(n) If a recipient has been determined eligible for Medicaid coverage under 7 AAC 100.002(d) (8), the recipient's income, exclusive of the personal needs allowance and other deductions described in 7 AAC 100.550 - 7 AAC 100.579 is a prior resource for home and community-based waiver services. Once the department has determined the recipient's monthly liability under 7 AAC 100.550 - 7 AAC 100.579, the recipient shall pay that liability toward the cost of care for home and community-based waiver services. If a recipient is receiving residential supported living services under 7 AAC 130.255, the recipient shall pay the liability first to the recipient's residential supported-living services provider, and second to other home and community-based waiver services providers if any monthly liability remains.

(Eff. 2/1/2010, Register 193; am 3/1/2011, Register 197; am 4/1/2012, Register 201; am 7/1/2013, Register 206; am ___/___/2013, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

7 AAC 145.531 is amended by adding a new subsection to read:

(g) A newly enrolled provider that has no meaningful business activity for at least the first two months of its first fiscal year is eligible for an exemption from the annual reporting requirements in subsection (e) of this section for its first fiscal year. For these purposes

(1) “no meaningful business activity” means the provider did not incur any

business expense and did not provide any recipient services for at least the first two months of the provider's fiscal period;

(2) "newly enrolled provider" means a provider that received a new Medicaid billing number less than 240 days before the beginning of business activity; and

(3) "exemption" means the provider requested and received written approval to be exempt from the reporting requirements. (Eff. 3/1/2011, Register 197; am 11/3/2012, Register 204; am ___/___/2013, Register _____)

Authority: AS 47.05.010 AS 47.07.040 AS 47.07.045
AS 47.07.030

7 AAC 160.900(d)(10) is amended to read:

(10) the *Chart of Personal Care Attendant and Waiver Services Rates*, dated April 24, 2013, for providers of personal care services under 7 AAC 125.010 - 7 AAC 125.199 and home and community-based waiver services under 7 AAC 130 **with an effective date of July 1, 2013 is chart A; the *Chart of Personal Care Attendant and Waiver Services Rates*, dated August 16, 2013, for providers of personal care services under 7 AAC 125.010 – 7 AAC 125.199 and home and community-based waiver services under 7 AAC 130 with an effective date of July 1, 2014 is chart B; for services provided before July 1, 2014, chart A applies; for services provided on or after July 1, 2014, chart B applies; chart A is repealed effective July 1, 2014** ;

7 AAC 160.900(d)(18) is amended to read:

(18) the *Specialized Medical Equipment Fee Schedule*, dated **August 16, 2013** [February 1, 2012], for home and community-based waiver services;

(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 ____/____/2013, Register _____)

Authority: AS 47.05.010 AS 47.07.030 AS 47.07.040

AS 47.05.012