

**OVERVIEW
PERSONAL
CARE
ASSISTANTS
REGS.,
3/3/06**

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



ADOPTED CHANGES TO REGULATIONS

7 AAC 43. MEDICAL ASSISTANCE. Personal Care Assistants



FILED REGULATIONS With Changes Made by the Department of Law

Effective April 1, 2006

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Notes to reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line above the text of the regulations states that a new section, subsection, paragraph, or subparagraph is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new or replaced text is not bolded or underlined.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 proposed to be deleted.
4. When the word "including" is used, Alaska Statutes provide that it means "including, but not limited to."

Title 7. Health and Social Services.

7 AAC 43.750 is repealed and readopted to read:

7 AAC 43.750. Purpose and scope of personal care services. (a) The purpose of personal care services is to enable an individual, of any age, whose needs would otherwise result in placement in an acute care hospital or nursing facility or loss of that individual's employment solely related to activities of daily living (ADL) to remain at home or prevent job loss.

(b) Personal care services must be provided by either an agency-based or consumer-directed program and must

- (1) be provided to an enrolled Medicaid recipient;
- (2) be approved in the recipient's PCAT service plan as provided in

7 AAC 43.751;

- (3) receive prior authorization from the department before service is provided;

and

(4) be provided by an individual who is not an immediate family member of the recipient or a legal representative and who is a personal care assistant

(A) selected by the recipient and employed by a personal care agency enrolled in the consumer-directed program under 7 AAC 43.786; or

(B) employed by a personal care agency enrolled in the agency-based program under 7 AAC 43.787; and

(5) be supported by a form that

(A) is provided by the department;

(B) identifies the recipient's diagnosis; and

(C) is completed by a physician, a physician assistant, or an advanced nurse practitioner, who is licensed in this state or practicing or employed in a federally or tribally owned or leased health facility in this state.

(c) The department may authorize personal care services for up to a 12-month period.

Reauthorization by the department for personal care services will be done on an annual basis and based upon a PCAT. (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: The form referenced in 7 AAC 43.750(b)(5) may be obtained from the Department of Health and Social Services, Division of Senior and Disabilities Services, 3601 C Street, Suite 310, Anchorage, Alaska 99503.

Effective 8/7/96, register 139, the Department of Health and Social Services readopted 7 AAC 43.750 in its entirety, without change, under AS 47.05 and AS 47.07. Executive Order No. 72 transferred certain rate-setting authority to the department.

7 AAC 43 is amended by adding new sections to read:

7 AAC 43.751. Personal care assessment tool (PCAT). (a) All personal care services must be performed in accordance with a recipient's PCAT that is approved by the department under this section. The recipient's PCAT will be prepared using the department's document entitled *Personal Care Assessment Tool (PCAT) 2005*, adopted by reference, including the

- (1) consumer assessment tool;
- (2) personal care services supplemental tool; and
- (3) service plan, including changes made under (e) of this section.

(b) The department or its designee will develop the recipient's PCAT, which must include

- (1) supporting documentation

- (A) on a form provided by the department;
 - (B) that identifies the recipient's diagnosis; and
 - (C) that is completed by a physician, a physician assistant, or an advanced nurse practitioner, who is licensed in this state or practicing or employed in a federally or tribally owned or leased health facility in this state;
- (2) an assessment of the recipient's personal care needs, prepared in accordance with (d) of this section;
- (3) specific instructions regarding the type and frequency of tasks the personal care assistant is expected to perform;
- (4) a statement of the expected outcome of the recipient's PCAT service plan;
- (5) for the consumer-directed program only, identification of any legal representative of the recipient and specification of the requirements of 7 AAC 43.768 for which the legal representative will be responsible; and
- (6) for the agency-based program only, a backup plan that defines the agency's responsibility to
- (A) provide services if the recipient's regularly scheduled personal care assistant is unable to provide those services;
 - (B) develop a contingency plan to ensure the health and welfare of the recipient if the recipient is unable to receive personal care services from either the regularly scheduled personal care assistant or from another personal care assistant

provided through the backup plan; and

(C) educate the recipient about the contingency plan.

(c) For the consumer-directed program only, the agency and either the recipient or the legal representative shall develop a backup plan that

(1) identifies the extent to which the agency or recipient is responsible for obtaining personal care services if the recipient's regularly scheduled personal care assistant is unable to provide those services; and

(2) includes a contingency plan that

(A) defines the agency's and the recipient's responsibilities to work with and educate a recipient about a plan of action to ensure the health and welfare of the recipient if the recipient's regularly scheduled personal care assistant is unable to provide personal care services and other personal care services are not available through the backup plan; and

(B) informs the recipient of the risks involved.

(d) An assessment of a recipient's need for personal care services will be

(1) recorded on the recipient's PCAT;

(2) based upon personal observation of the recipient; and

(3) performed by the department staff or designee and conducted in the

recipient's residence.

(c) Any change in a recipient's PCAT before the end of the 12-month authorization period

(1) must be developed by the department or its designee and approved as provided in (g)(1) of this section;

(2) must include medical or other relevant documentation of the recipient's condition;

(3) must be recorded in the recipient's PCAT service plan records; and

(4) may be made outside the recipient's residence and without personal observation of the recipient by the department or its designee.

(f) The department will establish a renewal date for a recipient's PCAT that coincides with the renewal of a plan of care under 7 AAC 43.1030 so that services are coordinated and payments are not duplicated. A copy of a recipient's PCAT will be made part of the recipient's service record under 7 AAC 43.1000 – 7 AAC 43.1110 (Home and Community-Based Waiver Services Program), if applicable.

(g) A recipient's PCAT developed under (a) of this section does not take effect unless approved by the department. The department will approve a recipient's PCAT if the department determines that each service listed in the PCAT

(1) is of sufficient duration, amount, and scope to prevent

(A) placement in an acute care hospital or nursing facility; or

(B) loss of employment; and

(2) is supported by documentation required under (b) of this section.

(h) Reimbursement is not available under 7 AAC 43.750 – 7 AAC 43.795 for any service provided that is not identified in a recipient's PCAT. (Eff. 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: The *Personal Care Assessment Tool (PCAT) 2005*, adopted by reference in 7 AAC 43.751, may be obtained from the Department of Health and Social Services, Division of Senior and Disabilities Services, 3601 C Street, Suite 310, Anchorage, Alaska 99503.

The form provided under 7 AAC 43.751(b)(1) may be obtained from the Department of Health and Social Services, Division of Senior and Disabilities Services, 3601 C Street, Suite 310, Anchorage, Alaska 99503.

7 AAC 43.752. Covered services. (a) If the requirements of 7 AAC 43.750 – 7 AAC 43.795 are met, the department will reimburse a personal care agency, whether it is enrolled in the consumer-directed or agency-based program, for services provided to a recipient in accordance with the recipient's PCAT for

(1) assistance with the recipient's activities of daily living (ADL), including

(A) physical assistance with basic personal hygiene and grooming,

including

(i) bathing;

(ii) dressing;

(iii) care of the mouth, hair, and skin; and

(iv) filing of toenails and both cutting and filing of fingernails,

excluding nail care for recipients who are diabetic or have poor circulation:

(B) physical assistance with bladder and bowel routines, including

(i) helping the recipient to and from the bathroom;

(ii) assisting the recipient with a bedpan or other toileting

procedures;

(iii) providing general hygiene care of a colostomy, an ileostomy,

or an external catheter;

(iv) giving suppositories that do not contain medication;

(v) providing digital stimulation; and

(vi) providing routine care of an incontinent recipient;

(C) assistance with eating;

(D) physical assistance with transferring the recipient in and out of a bed,

chair, or wheelchair and helping the recipient walk with support of a walker, cane,

gait belt, braces, or crutches; and

(E) physical assistance with positioning or turning a nonambulatory recipient in a bed or chair;

(2) assistance with a recipient's instrumental activities of daily living (IADL) essential to the recipient's health and specifically related to an approved task for an ADL need, including

- (A) light housekeeping tasks;
- (B) changing and laundering the recipient's bed linens;
- (C) laundering the recipient's clothing;
- (D) meal planning and preparation; and
- (E) shopping; and

(3) additional covered services, including

- (A) physical assistance taking and documenting the recipient's temperature, pulse, blood pressure, and respiration when medically necessary;
- (B) physical assistance with setup for diabetic testing and documentation;
- (C) physical assistance with
 - (i) care of nonsterile dressings for uninfected post-operative or chronic conditions;
 - (ii) prescribed foot care, excluding nail care for recipients who are diabetic or have poor circulation; and
 - (iii) the application of elastic bandages and support hose;
- (D) physical assistance with the use and minor maintenance of respiratory equipment and prescribed oxygen;

(E) physical assistance with putting on and removing a prosthetic device;

(F) assistance with self-administered routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach;

(G) physical assistance with walking and simple exercises prescribed by a physician, a physician assistant, or an advanced nurse practitioner, who is licensed in this state or practicing or employed in a federally or tribally owned or leased health facility in this state; and

(H) assistance with

(i) travel to and from routine medical and dental appointments;

and

(ii) conferring with medical or dental staff for routine medical or dental appointments.

(b) The department will reimburse only a personal care agency enrolled in the agency-based program for physical assistance with range-of-motion and stretching exercises, if

(1) the physical assistance is provided to a recipient in accordance with the recipient's PCAT; and

(2) the exercises are prescribed by a physician, a physician assistant, or an advanced nurse practitioner, who is licensed in this state or practicing or employed in a federally or tribally owned or leased health facility in this state.

(c) The department will reimburse only a personal care agency enrolled in the consumer-directed program for physical assistance for services provided to a recipient in accordance with the recipient's PCAT, including health maintenance activities, urinary system management, bowel treatments, administration of medications, tube feeding, and wound care.

(d) The department will reimburse for IADL services that are

- (1) provided to a recipient 18 years of age or older; and
- (2) approved under 7 AAC 43.751 as part of a recipient's PCAT service plan.

(e) The department will reimburse under this section for meal preparation essential to meeting a recipient's health needs, if the meal preparation service is

- (1) not duplicated by another meal service approved under 7 AAC 43.1053 or 42 U.S.C. 3001 – 3058ee (Older Americans Act);
- (2) provided in the recipient's home; and
- (3) provided in accordance with 42 U.S.C. 3030e(1).

(f) The department will reimburse under this section for up to four hours a month of assistance with shopping in the vicinity of a recipient's residence for prescribed drugs, medical supplies, groceries, and other household items required specifically for the health and maintenance of the recipient, including items required by the recipient but also used by other occupants of the recipient's residence.

(g) If there is a second recipient in a residence, the department may authorize a personal care assistant to perform an IADL for both recipients residing in the same residence.

(h) The department will authorize limited assistance, in conjunction with another service listed in this section essential to a recipient's health and specifically related to an approved task for an ADL listed in (a)(1) of this section, if

(1) the recipient's PCAT service plan supports an ADL self-performance of two or three for the respective ADL, as scored in Section E of the PCAT; and

(2) the recipient has a medical history of falls with injury, documented by a physician, a physician assistant, or an advanced nurse practitioner, who is licensed in this state or practicing or employed in a federally or tribally owned or leased health facility in this state.

(Eff. 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

The section heading of 7 AAC 43.755 is changed to read:

7 AAC 43.755. Excluded [CONSUMER-DIRECTED AND AGENCY-BASED PROGRAMS; EXCLUDED] services.

7 AAC 43.755(.,)(2) is amended to read:

(2) invasive body procedures; for purposes of this paragraph, invasive body procedures include [, INCLUDING] injections of medications, [AND] insertion or removal of catheters,[:] tracheostomy care,[:] enemas, deep suctioning, tube or other enteral feedings,[:] medication administration, and[: OR] care and maintenance of intravenous equipment;

7 AAC 43.755(a)(3) is amended to read:

(3) chore services in the home, except for those tasks identified in

7 AAC 43.752(a)(2): for purposes of this paragraph, chore services in the home include[.]

[INCLUDING] cleaning of floors and furniture not used directly by the recipient, [;] laundry not incidental to the recipient's care, [;] and cutting firewood;

7 AAC 43.755(a)(4) is amended to read:

(4) a task that the [PERSONAL CARE AGENCY, SUPERVISING NURSE, OR] department determines could reasonably be performed by the recipient;

7 AAC 43.755(a)(6) is amended to read:

(6) a task that is not on the recipient's PCAT [APPROVED] service plan that has been approved under 7 AAC 43.751:

7 AAC 43.755(a)(11) is amended to read:

(11) supervision, monitoring, cueing, transportation provided under 7 AAC 43.502, babysitting, social visitation, general monitoring for equipment failure, services provided under 7 AAC 43.1000 – 7 AAC 43.1110 (Home and Community-Based Waiver Services Program), home maintenance, or pet care, except for a service animal; [AND]

7 AAC 43.755(a)(12) is repealed:

(12) repealed 4/1/2006:

7 AAC 43.755(a) is amended by adding new paragraphs to read:

(13) tasks that supplant or duplicate assistance offered by an individual or organization without charge or that is paid for by a third party;

(14) IADL under 7 AAC 43.752 if

(A) the recipient or anyone else in the household is capable to perform or financially provide the IADL for the recipient;

(B) another relative, caregiver of the recipient, community or volunteer agency, or third-party payer is capable of or responsible for the provision of the IADL services;

(C) IADL services, other than shopping, are greater than one-third of the total time authorized per week for personal care services;

(D) other recipients living in the same residence receive IADL services under 7 AAC 43.75 – 7 AAC 43.795 or under 7 AAC 43.1000 – 7 AAC 43.1110 (Home and Community-Based Waiver Services Program); or

(E) the IADL services are not specifically related to a qualifying ADL listed in 7 AAC 43.752(a)(1);

(15) tasks to provide necessary food, clothing, shelter, or medical attention for a minor recipient that are a parental responsibility and are considered neglect under AS 47.10.014 if not performed.

7 AAC 43.755 is amended by adding a new subsection to read:

(c) The department will not make separate payment for personal care assistants under 7 AAC 43.750 – 7 AAC 43.795 if the recipient receives in-home support services under 7 AAC 43.1046(b)(5). (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.760(a) is amended to read:

7 AAC 43.760. Place [CONSUMER-DIRECTED AGENCY-BASED PROGRAMS; PLACE] of service. (a) Personal care services may be provided only to a recipient who is living in the recipient's personal residence and [OTHERWISE] meets the requirements of this section.

7 AAC 43.760(b)(3) is amended to read:

(3) a foster home licensed under AS 47.32 [7 AAC 50], except for recipients in a licensed foster home who are receiving residential habilitation services under 7 AAC 43.1000 – 7 AAC 43.1110;

7 AAC 43.760(b)(4) is amended to read:

(4) an assisted living home licensed under AS 47.32 and AS 47.33; [7 AAC 75.]

7 AAC 43.760(b) is amended by adding new paragraphs to read:

(5) a residence where personal care services are already paid in a contractual agreement;

(6) an acute care hospital.

7 AAC 43.760(c) is repealed and readopted to read:

(c) The department will not pay for transportation, room, or board for a personal care assistant to travel with a recipient away from the recipient's municipality of residence. However, the department will pay for a recipient's approved services for up to two weeks annually while the recipient is away from the recipient's municipality of residence, unless additional time is required based on documented medical necessity or for education not available in this state, if

(1) the department authorizes the travel before it begins; and

(2) as specified in the recipient's PCAT, the need cannot be met during the travel period by any means other than by being accompanied by a personal care assistant.

7 AAC 43.760(d) is repealed:

(d) Repealed 4/1/2006.

7 AAC 43.760(e) is repealed:

(e) Repealed 4/1/2006.

(Eff. 11/6/86, Register 100; am 6/27/92, Register 122; am 7/1/95, Register 134; readopt 8/7/96, Register 139; am 3/1/98, Register 145; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.765 is repealed:

7 AAC 43.765. Agency-based program; service plan. Repealed. (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; repealed 4/1/2006, Register 177)

Publisher: {Delete the editor's note after 7 AAC 43.765.}

7 AAC 43.766 is repealed:

7 AAC 43.766. Consumer-directed program; service plan. Repealed. (Eff. 10/1/2001, Register 159; am 6/19/2004, Register 170; repealed 4/1/2006, Register 177)

7 AAC 43.768 is repealed and readopted to read:

7 AAC 43.768. Consumer-directed program; recipient requirements. (a) To qualify for personal care services from a consumer-directed program, a recipient must have a health-related condition that results in the need for personal care services, and either the recipient or the recipient's legal representative must be capable and willing to

- (1) supervise the personal care assistant;
- (2) demonstrate a capacity for making choices about ADL under 7 AAC 43.752, understand the impact of those choices, and assume the responsibility of those choices;
- (3) designate a consumer-directed personal care agency as responsible to fulfill the responsibilities of 7 AAC 43.786 on behalf of the recipient;
- (4) cooperate with the department staff or designee in the review of the recipient's PCAT;
- (5) cooperate with the department staff or designee, and with other state and federal oversight agencies, in conducting compliance reviews, investigations, or audits;
- (6) negotiate a recipient contract with the consumer-directed personal care agency;

(7) specify the training requirements of the personal care assistant and assure that the specified training has been received; and

(8) obtain a physician's, a physician assistant's, or an advanced nurse practitioner's prescription regarding the recipient's home exercise or range-of-motion program under 7 AAC 43.752(a)(3)(G) or (b).

(b) A recipient or the recipient's legal representative

(1) is primarily responsible for the scheduling, training, and supervising of the personal care assistant; and

(2) has the right to terminate the personal care assistant providing services to that recipient.

(c) A recipient's legal representative must be

(1) an unpaid care provider involved in the day-to-day care of the recipient; and

(2) managing the recipient's care, and capable of evaluating the care, as it occurs in the home.

(d) A recipient or a recipient's legal representative must notify the personal care agency within five days after the date that the service needs of the recipient change or the name or the address of the recipient or the recipient's legal representative changes. (Eff. 10/1/2001, Register 159; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.770 is repealed and readopted to read:

7 AAC 43.770. Employment of personal care assistants; qualifications. (a) To be enrolled as a personal care assistant and work for a personal care agency in either the consumer-directed program or the agency-based program, a personal care assistant

(1) must be at least 18 years of age;

(2) must meet all requirements for the position as set out in 7 AAC 43.750 –

7 AAC 43.795;

(3) must be individually enrolled with the department;

(4) may not be disqualified for the position due to a criminal conviction or a pending charge for a criminal offense set out in (e) of this section;

(5) may not have been denied a health care provider license or certification for a reason related to patient services described in this chapter, or ever had a license or certification revoked;

(6) must be able independently to assist the recipient with the specific ADL under 7 AAC 43.752 and services provided to a recipient.

(b) To be a personal care assistant working in the agency-based program, an individual must

(1) submit three letters of reference from individuals who

(A) are not employed by the same personal care agency;

(B) are not under the individual's supervision;

(C) have known the personal care assistant for at least three years; and

(D) attest to the personal care assistant's good character and ability to

meet the performance requirements of a personal care assistant; and

(2) submit evidence of having met the education and training requirements of

7 AAC 43.771.

(c) A personal care assistant must provide the employing agency all documentation, fingerprint cards, and fees necessary for requesting the personal care assistant's criminal history record information under AS 12.62.160. The agency shall submit a request for criminal history record information on a personal care assistant to the Department of Public Safety no later than 10 working days after the personal care assistant is hired. The agency shall contact the department within five days after the agency receives the Department of Public Safety's determination. The agency may employ a person as a personal care assistant on a conditional basis pending completion of review of the criminal history record information requested. The department will not pay for services provided by a personal care assistant for whom criminal history record information was not timely requested.

(d) An individual may not be employed as a personal care assistant by a personal care agency if criminal history record information shows that the individual has a conviction or a pending charge in any jurisdiction for one of the criminal offenses listed in (e) of this section. An individual may appeal denial of employment by an agency to the department if the individual

was denied employment with an agency on the basis of criminal history rec information and is challenging the accuracy of the criminal history information.

(e) For the purposes of (a) and (d) of this section, the following are disqualifying criminal offenses, some of which disqualify a person for a limited period of time, as specified:

(1) an unclassified felony under AS 11, including murder in the first and second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, misconduct involving a controlled substance in the first degree, and kidnapping;

(2) a class A felony under AS 11 or AS 28, including manslaughter, assault in the first degree, misconduct involving weapons in the first degree, misconduct involving a controlled substance in the second degree, arson in the first degree, and robbery in the first degree;

(3) two or more class B felony offenses under AS 11 or AS 28;

(4) sexual abuse of a minor in the second degree, a class B felony under AS 11.41.436;

(5) sexual abuse of a minor in the third degree, a class C felony under AS 11.41.438;

(6) class A, B, and C felony assault under AS 11.41.200 - AS 11.41.220;

(7) endangering the welfare of a child in the first or second degree, as defined in AS 11.51.100 and 11.51.110, respectively;

(8) endangering the welfare of a vulnerable adult in the first degree, a class C felony under AS 11.51.200;

(9) endangering the welfare of a vulnerable adult in the second degree, a class A misdemeanor under AS 11.51.210;

(10) stalking in the first degree, a class C felony under AS 11.41.260;

(11) failure to register as a sex offender, a class A misdemeanor under AS 11.56.840;

(12) possession of child pornography, a class C felony under AS 11.61.127;

(13) misconduct involving a corpse, a class A misdemeanor under AS 11.61.130;

(14) a single class B felony under AS 11 or AS 28 not listed in (1) - (13) of this subsection, for a period of 10 years after the person was convicted of the crime;

(15) a class C felony under AS 11 or AS 28 not listed in (1) - (13) of this subsection, for a period of five years after the person was convicted of the crime, or until that person is no longer subject to probation or parole restrictions, whichever is longer;

(16) any crime that is not listed in (1) - (15) of this subsection, for a period of five years after the person was convicted of the crime, or until that person is no longer subject to probation or parole restrictions, whichever is longer, unless the person convicted of or charged with the crime

(A) reveals the conviction or charge at the time of employment; and

(B) provides evidence satisfactory to the agency that the person

does not pose a risk to recipients and will not adversely affect the safety or effective provision of services;

(17) unlawful exploitation of a minor under AS 11.41.455.

(f) This section does not require an agency to terminate employment of a personal care assistant convicted of an offense listed in (e) of this section if that person was an employee of the agency as a personal care assistant on June 19, 2004, unless the person did not respond truthfully to a question, asked before that date, about a felony conviction for an offense that would have been a disqualifying offense before that date.

(g) On or after February 1, 2007, a personal care assistant employed by a consumer-directed agency must provide proof to the employing agency of having and maintaining a valid certificate in

(1) first aid issued by the American Red Cross, American Heart Association, or other agency approved by the department; and

(2) cardiopulmonary resuscitation (CPR) issued by the American Red Cross, American Heart Association, or other agency approved by the department.

(h) The department may waive, for up to six months, the first aid or CPR requirements of 7 AAC 43.771(a) and, on or after February 1, 2007, the first aid or CPR requirements of (g) of this section, if a personal care assistant is unable to attend the first aid or CPR courses, or obtain the first aid or CPR certificates due to reasonable cause or excusable neglect. The personal care assistant must request a waiver in writing, to the department, and must include a statement

explaining the reasonable cause or excusable neglect. If the department grants a waiver, the department may prescribe an alternative method of compliance with the requirements.

(i) In this section, "reasonable cause or excusable neglect" includes

(1) medical emergency;

(2) weather; and

(3) unavailability of classes in the community. (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.05.310 AS 47.07.030
AS 47.05.017

Editor's note: Effective 8/7/96, Register 139, the Department of Health and Social Services readopted 7 AAC 43.770 in its entirety, without change, under AS 47.05 and AS 47.07. Executive Order No. 72 transferred certain rate-setting authority to the department.

[AS A RESULT OF THE 6/29/96 AMENDMENT OF 7 AAC 43.770, THE MATERIAL IN THE SECTION WAS DESIGNATED SUBSECTION (a), EVEN THOUGH THERE WERE NO OTHER SUBSECTIONS IN THE SECTION.

AS OF REGISTER 151 (OCTOBER 1999), THE REGULATIONS ATTORNEY MADE TECHNICAL REVISIONS UNDER AS 44.62.125(b)(6) TO REFLECT THE NAME CHANGE

OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT MADE BY CH. 58, SLA 1999 AND THE CORRESPONDING TITLE CHANGE OF THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT.]

7 AAC 43.771 is repealed and readopted to read:

7 AAC 43.771. Agency-based program; personal care assistant education and training requirements. (a) A personal care assistant in the agency-based program must have and maintain a valid certificate in first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross, American Heart Association, or other agency approved by the department. A personal care assistant must also

- (1) hold a valid license as a nurse in this state under AS 08.68;
- (2) hold a valid certification as a certified nurse aide in this state under AS 08.68;
- (3) have satisfactorily completed training as specified in (b) of this section and passed a standardized competency test approved by the department; or
- (4) have had training or experience equivalent to the training specified in (b) of this section within the five years immediately preceding application to work in the program, and passed a standardized competency test approved by the department.

(b) Training referred to in (a)(3) or (4) of this section must be approved by the department, must be provided by a nurse licensed under AS 08.68, and must provide at least 40 hours of instruction in the following subject areas:

- (1) infection control in the home;
- (2) bowel and bladder care;
- (3) basic nutrition and food planning and preparation;
- (4) procedures for physical transfers, including emergency evacuation of physically disabled persons and nonambulatory persons;
- (5) assistance with self-administered medication;
- (6) procedures for taking blood pressure, temperature, pulse, and respiration;
- (7) understanding and working with children, the elderly, persons with physical or developmental disabilities, persons with communicable diseases, and persons with physical or mental illnesses;
- (8) practical knowledge of body systems, body mechanics, body disorders and diseases, and the observation of body functions;
- (9) death and dying;
- (10) practical skills and use of equipment necessary to perform tasks identified in 7 AAC 43.752(a)(1);
- (11) legal requirements affecting personal care assistants, including record keeping under 7 AAC 43.030, confidentiality, personal care assistant program responsibilities as

set out in this chapter, medical assistance fraud under AS 47.05.210, and reporting of harm under AS 47.17.020 – 47.17.022 and AS 47.24;

(12) universal precautions; for purposes of this paragraph, “universal precautions” means the infectious control precautions that are recommended by the United States Department of Health and Human Services, Centers of Disease Control and Prevention to be used to prevent the transmission of blood-borne germs such as human immunodeficiency virus and hepatitis B virus;

(13) infection control.

(c) The department may allow reimbursement for services provided by an individual who has performed duties similar to those of a personal care assistant under 7 AAC 43.750 – 7 AAC 43.795, has completed at least 16 hours of training in the areas listed in (b) of this section, and whose job performance has been found satisfactory by the appropriate personal care agency, based upon references or other verification, but whose training does not meet the requirements of this section, if that individual

(1) is otherwise qualified to act as a personal care assistant under 7 AAC 43.770;

(2) provides proof of enrollment in training that, within four months after beginning employment as a personal care assistant, will qualify the individual to meet the requirements of (b) of this section; and

(3) ensures that the personal care agency provides proof that the individual has successfully completed the 16 hours of training required under this subsection to enable that

individual to be eligible for reimbursement as a personal care assistant. (Eff. 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: Effective 8/7/96, Register 139, the Department of Health and Social Services readopted 7 AAC 43 771 in its entirety, without change, under AS 47.05 and AS 47.07. Executive Order No. 72 transferred certain rate-setting authority to the department.

[AS OF REGISTER 151 (OCTOBER 1999), THE REGULATIONS ATTORNEY MADE TECHNICAL REVISIONS UNDER AS 44.62.125(b)(6) TO REFLECT THE NAME CHANGE OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT MADE BY CH. 58, SLA 1999 AND THE CORRESPONDING TITLE CHANGE OF THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT.]

7 AAC 43.775 is repealed and readopted to read:

7 AAC 43.775. Responsibilities of personal care assistant. (a) In the consumer-directed and the agency-based programs, a personal care assistant shall maintain a contemporaneous service record for Medicaid billing for each recipient for whom that assistant provides personal care services. The record must include

(1) documentation of tasks performed under the categories of the PCAT service plan, including case notes, frequency, scope, and duration;

(2) any changes in the recipient's PCAT service plan prepared under 7 AAC 43.751 and approved by the department;

(3) a copy of the PCAT service plan signed by, or bearing the legal mark of, the recipient or the recipient's legal representative and the department or its designee;

(4) a time sheet recording the date, time, and length of each visit and the services provided during each visit; and

(5) the signature or legal mark of the recipient or the recipient's legal representative on each time sheet, verifying that services were provided as reported by the personal care assistant.

(b) If a recipient changes personal care assistants or discontinues personal care services, the former personal care assistant shall deliver the record required by (a) of this section to the appropriate personal care agency within two days.

(c) If a personal care assistant terminates employment, the personal care assistant shall deliver the record required by (a) of this section to the appropriate personal care agency within two days.

(d) A personal care assistant may not

(1) accept payment in any form from a recipient for any Medicaid-reimbursable service; or

(2) solicit clients for personal care services.

(e) A personal care assistant shall keep all information concerning a recipient confidential in accordance with P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996).

(f) A personal care assistant is subject to the reporting requirements of AS 47.17.020 and AS 47.24.010.

(g) A personal care assistant shall inform the personal care agency within 10 days after a change in the personal care assistant's

(1) name;

(2) license, certification, or registration status;

(3) mailing address, physical address, or telephone number; or

(4) record of any convictions or pending criminal charges from that disclosed by the criminal justice information obtained under 7 AAC 43.770(a).

(h) In this section, "case notes" means progress notes documented after services are provided that

(1) include how the recipient responded to care;

(2) identify any changes, improvement, or decline in the recipient's health, safety, or welfare, including changes in physical or mental conditions; and

(3) are dated, signed by a personal care assistant, and contained in the recipient's service record. (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.780 is repealed and readopted to read:

7 AAC 43.780. Agency-based program; supervising registered nurse. (a) A personal care agency in the agency-based program shall retain a supervising registered nurse, licensed under AS 08.68, to perform the following duties:

(1) obtain from the department prior authorization to implement the PCAT service plan for each recipient;

(2) at least once every six months perform, or supervise the performance of, a review of the recipient's services, including

(A) interviewing the recipient at the recipient's residence to assure services are provided and meeting the recipient's needs;

(B) evaluating the service records, including time sheets prepared by the recipient's personal care assistant;

(C) verifying in writing that the services provided are consistent with the recipient's PCAT service plan;

(D) determining whether progress is being made toward achieving the service goal; and

(E) notifying the department of any recommended changes in the number of personal care service hours and the reasons for the recommended changes;

(3) if the recipient resides in a community not accessible by road or air service, arrange for telephone, radio, or, if feasible, in-person contact with the recipient and the personal care assistant to the extent allowed by the recipient's PCAT service plan and the condition of the recipient, and request that the department waive the residence visitation requirements of this section if necessary; if the six-month, in-person visitation is waived, an in-person visitation must occur annually;

(4) put written provisions in the recipient's file for emergency situations that the personal care assistant may encounter;

(5) maintain communications with the recipient, the recipient's physician, if any, and the personal care assistant;

(6) maintain a service record for each recipient that includes a

(A) copy of each PCAT service plan, assessment, and evaluation made for the duration of care including changes made under 7 AAC 43.751;

(B) copy of the personal care assistant's time sheets; and

(C) record of all contacts with the recipient, the recipient's health care provider, if any, and the personal care assistant.

(b) A supervising registered nurse under (a) of this section is subject to the reporting requirements of AS 47.17.020 and AS 47.24.010.

(c) For purposes of this section, "supervising" means implementing and overseeing the PCAT service plan for a recipient in accordance with this section. A supervising nurse is not required to perform administrative or personnel functions such as hiring, disciplining, scheduling, or terminating a personal care assistant. (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.786 is repealed and readopted to read:

7 AAC 43.786. Consumer-directed program; personal care agencies. (a) A consumer-directed personal care agency shall, in addition to meeting the requirements under 7 AAC 43.750 – 7 AAC 43.795, review a recipient's needs semiannually in the recipient's home. If the recipient resides in a community not accessible by road or air service, a consumer-directed personal care agency shall arrange for telephone, radio, or, if feasible, in-person contact with the recipient and the personal care assistant to the extent allowed by the recipient's PCAT service plan and the condition of the recipient, and request that the department waive the residence

visitation requirements of this section if necessary. If the semiannual in-person visitation is waived, an in-person visitation must occur annually.

(b) As an employer, an agency shall collect and verify consumer-directed personal care assistants' time sheets and submit claims to the department. Individual personal care assistants employed by an agency are not responsible for submitting their own claims.

(c) Before the agency submits the application materials required under 7 AAC 43.793, the administrator of a personal care agency in the consumer-directed program shall attend a department orientation.

(d) A newly employed administrator of an existing consumer-directed program shall attend a department orientation within six months after the date of hire by the personal care agency, if the department does not have documentation that any other current employee of the personal care agency has attended a mandatory department orientation.

(e) A recipient who, because of lack of capacity under 7 AAC 43.768(a), has been terminated from the consumer-directed program by the consumer-directed agency that has been providing services to the recipient is eligible to transfer to, and to receive personal care services through, an approved personal care agency in the agency-based program. Except as provided in 7 AAC 43.789, and at least 30 days before the date of termination, the agency terminating services to a recipient shall give the recipient written notice of the termination and of the recipient's eligibility to apply to the department for inclusion in the agency-based program. (Eff. 10/1/2001, Register 159; am [READOPT] 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.787 is repealed and readopted to read:

7 AAC 43.787. Agency-based program; personal care agencies. (a) A personal care agency in the agency-based program may provide personal care services for a recipient who does not yet have a PCAT service plan approved by the department under 7 AAC 43.751, if the recipient

(1) is being or has been discharged from an acute care facility or a nursing facility;

(2) has a discharge plan or a physician's confirmation of diagnosis and request for personal care services to begin immediately upon discharge from an acute care facility or a nursing facility, and home health services are not available or indicated; and

(3) has a plan to have an assessment done by the department or its designee within three days after discharge from an acute care facility or nursing facility; the three-day period may be extended if the department or its designee is not available to conduct the assessment within three days.

(b) A personal care agency in the agency-based program may provide personal care services for a recipient who does not yet have a PCAT service plan approved by the department under 7 AAC 43.751, if the recipient's primary caregiver is absent due to an emergency and lack of personal care services will result in immediate hospitalization or placement in a nursing

facility. The recipient must have an assessment done by the department or its designee within three days after the emergency caregiver absence occurs. The three-day period may be extended if the department or its designee is not available to conduct the assessment within three days.

(c) A personal care agency in the agency-based program may deny an application for employment of a personal care assistant for any reason subject to sanction under 7 AAC 43.950.

(d) Before the agency submits the application materials required under 7 AAC 43.793, the administrator of a personal care agency in the agency-based program shall

(1) attend a department orientation;

(2) establish the agency's policy on termination of services to be provided to recipients; and

(3) establish a grievance procedure for employees.

(e) A newly employed administrator of an existing agency-based program shall attend a department orientation within six months after the date of hire by the personal care agency, if the department does not have documentation that any other current employee of the personal care agency has attended a mandatory department orientation. (Eff. 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.788 is amended to read:

7 AAC 43.788. Safety [CONSUMER-DIRECTED AND AGENCY-BASED PROGRAMS; SAFETY] of recipients. (a) An agency or an employee of an agency in either the consumer-directed or agency-based program who has reasonable cause to believe that a recipient of any service rendered under 7 AAC 43.750 - 7 AAC 43.795 is subject to [PHYSICAL, SEXUAL, ECONOMIC, OR MENTAL] abuse [,] or coercion of any kind, shall report that belief to the department immediately in accordance with AS 47.17.020 and AS 47.24.010 [7 AAC 37.050].

(b) If an immediate termination of services under 7 AAC 43.789 appears likely to put a recipient at risk of harm, the agency shall

(1) include a statement to that effect in its notice to the department for referral of the recipient to adult protective services or the office of children's services within the department; and

(2) [SHALL] promptly call the department's adult protective services hotline or the child abuse hotline. (Eff. 6/27/92, Register 122; readopt 8/7/96, Register 139; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: Effective 8/7/96, Register 139, the Department of Health and Social Services readopted 7 AAC 43.788 in its entirety, without change, under AS 47.05 and AS 47.07. Executive Order No. 72 transferred certain rate-setting authority to the department.

The hotline number for the department's [DIVISION OF SENIOR SERVICES'] adult protective services is 1-800-478-9996. The child abuse hotline number for the department is 1-800-478-4444.

7 AAC 43.790 is repealed and readopted to read:

7 AAC 43.790. Payment for services. (a) The department will only provide Medicaid reimbursement for personal care services that are performed in accordance with 7 AAC 43.750 – 7 AAC 43.795 and applicable federal and state law.

(b) The department will base its reimbursement on the tasks specified in the recipient's approved PCAT service plan under 7 AAC 43.751 and the time authorized by the PCAT service plan for each task, to the extent that the tasks and times are consistent with the recipient's condition.

(c) In the agency-based and consumer-based programs, the total time per task for each week may not exceed the time authorized in the recipient's PCAT service plan. If the time-per-task activity is provided less than one time per week, the time may not exceed the authorized time per period.

(d) Reimbursement for an enrolled personal care agency's provision of personal care services may not exceed \$21 an hour. This rate includes reimbursement for all personal care and administrative services rendered, including travel and telephone expenses. At least 50 percent of the annual total reimbursement paid by the department to a personal care agency for personal care services must be spent on compensation for personal care assistants.

(e) On or after February 1, 2007, a personal care assistant's rendering provider identification number must be submitted with each claim that the personal care agency submits for Medicaid reimbursement from the department. (Eff. 11/6/86, Register 100; am 6/27/92, Register 122; am 7/1/95, Register 134; readopt 8/7/96, Register 139; am 3/1/98, Register 145; am 10/21/98, Register 148; am 10/1/2001, Register 159; am 1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

Editor's note: [COPIES OF THE DIVISION OF MEDICAL ASSISTANCE MANUAL FOR PERSONAL CARE SERVICES TIME PER TASK STANDARDS, AS REVISED IN FEBRUARY 1992, MAY BE OBTAINED FROM ANY ENROLLED PERSONAL CARE AGENCY OR BY WRITING OR CALLING THE DIVISION OF MEDICAL ASSISTANCE, 4501 BUSINESS PARK BOULEVARD, SUITE 24, ANCHORAGE, ALASKA 99503-7167.]

Effective 8/7/96, Register 139, the Department of Health and Social Services readopted

7 AAC 43.790 in its entirety, without change, under AS 47.05 and AS 47.07. Executive Order No. 72 transferred certain rate-setting authority to the department.

7 AAC 43 is amended by adding a new section to read:

7 AAC 43.791. Review and appeal rights. (a) A recipient who is terminated from a consumer-directed or agency-based program may challenge that termination through the agency's grievance procedure, as the agency documented that procedure in the application materials required under 7 AAC 43.793.

(b) If the PCAT shows that an individual is not capable of managing consumer-directed services because of a lack of capacity as provided in 7 AAC 43.768, or if a person is terminated from a consumer-directed program because the individual lacks capacity to manage personal care services, the individual may appeal that decision under 7 AAC 49.

(c) If a service authorized by the PCAT service plan is reduced, terminated, or denied, the recipient may appeal that decision under 7 AAC 49. (Eff. 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43 is amended by adding new sections to read:

7 AAC 43.793. Provider certification and enrollment. (a) To be certified and enrolled by the department as a provider of personal care assistant services, a personal care

agency must meet the applicable certification criteria, including provider qualifications and program standards, set out in the department's *Personal Care Assistance Agency Certification Application Packet*, dated 2005 and adopted by reference, which the agency must submit to the department. (Eff. 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

An editor's note is added to read:

Editor's note: The *Personal Care Assistance Agency Certification Application Packet*, adopted by reference in 7 AAC 43.793, may be obtained from the Department of Health and Social Services, Division of Senior and Disabilities Services, 3601 C Street, Suite 310, Anchorage, Alaska 99503.

7 AAC 43.794. Provider decertification and disenrollment. (a) The department may deny enrollment or certification to, or disenroll or decertify, a personal care agency as a provider for the consumer-directed or agency-based program

(1) if the agency does not meet the requirements in the department's *Personal Care Assistance Agency Certification Application Packet*, adopted by reference in 7 AAC 43.793;

(2) for grounds and under procedures set out in 7 AAC 43.950 – 7 AAC 43.985;

or

(3) if the agency is no longer qualified for certification under this chapter.

(b) Providers that are disenrolled or decertified by the department under (a)(2) or (3) of this section may appeal that decision under 7 AAC 43.980. (Eff 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030

7 AAC 43.795 is repealed and readopted to read:

7 AAC 43.795. Definitions. In 7 AAC 43.750 - 7 AAC 43.795, unless the context requires otherwise,

(1) "ADL" means activities of daily living;

(2) "acute care hospital" means a facility that provides inpatient hospitalization for medical and surgical care of acute illness or injury;

(3) "agency-based program" means a program to provide personal care services to a recipient who is unable to, or who chooses not to, take responsibility for managing those services;

(4) "consumer-directed program" means a program to provide personal care services to a recipient who takes, or whose legal representative takes, responsibility for managing those services;

(5) "CPR" means cardiopulmonary resuscitation;

(6) "health care professional" means a physician, a physician assistant, a nurse

practitioner, a registered nurse, an occupational therapist, or a clinical social worker;

(7) "IADL" means instrumental activities of daily living;

(8) "immediate family member of the recipient" means a relative of the recipient with a duty to support the recipient under state law;

(9) "legal representative" means a recipient's

(A) agent under a power of attorney;

(B) parent, if the recipient is a minor; or

(C) legal guardian;

(10) "PCAT" means the department's *Personal Care Assessment Tool (PCAT) 2005*, adopted by reference in 7 AAC 43.751;

(11) "physician" means a person

(A) licensed under AS 08.64 to practice medicine or surgery; or

(B) practicing in a federally or tribally owned or leased health facility in this state as a physician;

(12) "service animal" means an animal trained to assist a physically or mentally challenged person, and certified by a school or training facility for service animals as having completed that training;

(13) "solicitation" means an attempt to encourage a recipient to acquire personal care services directly from a personal care assistant for gain or profit directly by the personal care assistant or the personal care assistant's employing agency. (Eff. 6/27/92, Register 122;

Register 177, April 2006

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readopt 8/7/96. Register 139; am 10/21/98, Register 148; am 10/1/2001, Register 159; am
1/1/2002, Register 160; am 6/19/2004, Register 170; am 4/1/2006, Register 177)

Authority: AS 47.05.010 AS 47.07.030