

ALASKA

Title 7. Health and Social Services

Part 1. Administration

Chapter 10. Licensing, Certification and Approvals.

Article

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Article 1

Purpose, Applicability, and Administrative Provisions Section

10. Purpose of chapter.
15. Applicability of chapter.

7 AAC 10.010. Purpose of chapter

The purpose of this chapter is to establish certain licensing, certification, approval, and other requirements for entities and individual service providers referred to in 7 AAC 10.015, and to establish standards for the protection of public health, safety, and welfare.

History: Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.05.300	AS 47.05.310	AS 47.05.330
AS 47.14.120	AS 47.32.010	AS 47.32.020
AS 47.32.030	AS 47.33.005	AS 47.33.010

7 AAC 10.015. Applicability of chapter

The provisions of

- (1) 7 AAC 10.900 - 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry) apply to an entity or individual described in 7 AAC 10.900(b) ;
 - (2) 7 AAC 10.1000 - 7 AAC 10.1095 (Environmental Health and Safety) apply to an entity listed in 7 AAC 10.1000(b) ; and
 - (3) 7 AAC 10.9500 - 7 AAC 10.9535 (General Variance Procedures) and 7 AAC 10.9600 - 7 AAC 10.9620 (Inspections and Investigations) apply to an entity subject to AS 47.32 and
- (A) this chapter; or
 - (B) 7 AAC 12.

History: Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.05.300	AS 47.05.310	AS 47.05.330
AS 47.14.120	AS 47.32.010	AS 47.32.020
AS 47.32.030	AS 47.33.005	AS 47.33.010

Article 2

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Article 3

Barrier Crimes, Criminal History Checks, and Centralized Registry

Section

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7 AAC 10.900. Purpose and applicability; exceptions

(a) The purpose of 7 AAC 10.900 - 7 AAC 10.990 is to establish standards, requirements, and procedures dealing with barrier crimes and conditions, criminal history checks, and the centralized registry, including

(1) the identification of offenses and conditions that would bar an individual from

(A) licensure, certification, or approval by the department;

(B) a finding of eligibility to receive certain payments from the department; and

(C) association with an entity or individual service provider in a manner described in (b) of this section;

(2) requirements for requesting a criminal history check and procedures to determine whether a barrier crime exists;

(3) requirements for maintaining compliance with AS 47.05.300 - 47.05.390, AS 47.32, and 7 AAC 10.900 - 7 AAC 10.990, including standards for association and requirements for continued monitoring and notification; and

(4) the establishment of a centralized registry as required by AS 47.05.330 .

(b) The provisions of 7 AAC 10.900 - 7 AAC 10.990 apply to an entity or individual service provider seeking licensure, certification, approval, or a finding of eligibility to receive payments from the department. Each individual who is to be associated with the entity or provider in a manner described in this subsection must have a valid criminal history check conducted under 7 AAC 10.900 - 7 AAC 10.990 if that individual is 16 years of age or older and will be associated with the entity or provider as

(1) an administrator or operator;

(2) an individual service provider;

(3) an employee, an independent contractor, an unsupervised volunteer, or a board member if that individual has

(A) regular contact with recipients of services;

(B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions;

(4) an officer, director, partner, member, or principal of the business organization that owns an entity, if that individual has

(A) regular contact with recipients of services;

(B) access to personal or financial records maintained by the entity or provider regarding recipients of services; or

(C) control over or impact on the financial well-being of recipients of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions;

(5) except as provided in (c) and (d)(10) of this section, an individual who resides in a part of an entity, including a residence if services are provided in the residence, if the individual remains, or intends to remain, in the entity for 45 days or more, in total, in a 12-month period; or

(6) except as provided in (c) and (d) of this section, any other individual who is present in the entity and would have regular contact with recipients of services.

(c) A criminal history check under 7 AAC 10.900 - 7 AAC 10.990 is not required for a recipient of services, unless that individual is also associated with the entity or individual service provider in any manner described in

(b)(1) - (4) of this section.

(d) A criminal history check under 7 AAC 10.900 - 7 AAC 10.990 is not required for the following individuals, if supervised access is provided in accordance with (e) of this section:

(1) a relative of a recipient of services, unless that relative is also associated with the entity or provider in any manner described in

(b)(1) - (5) of this section;

(2) a visitor of a recipient of services, unless that visitor is also associated with the entity or provider in any manner described in (b) (1) - (4) of this section;

(3) an individual for whom the entity or provider submits evidence to the department of a fingerprint-based background check

(A) conducted and implemented under a process that meets or exceeds the standards of 7 AAC 10.900 - 7 AAC 10.990; and

(B) that is required

(i) as a condition for obtaining a professional license or certification under AS 08;

(ii) by federal law for an entity or individual service provider described in AS 47.05.300 ;
or

(iii) as a condition of employment or association that is imposed by an entity or individual service provider described in AS 47.05.300 ;

(4) an employee, independent contractor, unsupervised volunteer, board member, officer, director, partner, member, or principal of the business organization that owns an entity if that individual is not associated with the entity or an individual service provider in any manner described in (b)(1) - (4) of this section;

(5) an approved relative provider under 7 AAC 41.200(e) ;

(6) a personal physician, an infant learning teacher, an attendant for a child with special needs as described in 7 AAC 57.940, a licenser, a fire marshal, a food services sponsor, or another similar individual who

(A) is not associated with the entity or provider under (b) of this section; and

(B) provides support services to the entity or provider or to a recipient of services;

(7) an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services;

(8) an individual who resides in any part of an entity, including a residence if services are provided in the residence, if the individual remains in the entity or residence for less than 45 days, in total, in a 12-month period;

(9) a parent's designee to drop off and pick up a child in care, unless the designee is also associated in a manner described in (b) of this section with the entity providing child care;

(10) a parent who receives money from the department for purposes of paying an approved in-home child care provider under 7 AAC 41.370, and any other individual who resides in that parent's household; however, the exemption in this paragraph does not apply to an approved in-home child care provider who resides in the household;

(11) an occasional guest of the administrator or operator of an entity or of a provider.

(e) An entity or individual service provider must provide supervised access for an individual exempted under (d) of this section if the individual is present in the entity during hours of operation. Supervised access is not required in a residence where in-home child care is provided under 7 AAC 41.370.

(f) For purposes of (b)(5) and (d)(8) of this section, "individual who resides in any part of an entity" means an individual who dwells continuously in, or legally occupies, the premises housing the entity or provider, as evidenced by (1) the individual's address on the individual's permanent fund dividend received under AS 43.23, driver's license, fishing or hunting license, or other official record; or (2) observation by another individual of the individual occupying the premises.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.905. Barrier crimes

(a) A barrier crime is a criminal offense that is inconsistent with the standards for licensure, certification, approval, or eligibility to receive payments. The barrier crime standards and prohibitions in this section apply to an individual who

(1) seeks to be associated or to remain associated in a manner described in 7 AAC 10.900(b) with an entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990; and

(2) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in this section or a crime with similar elements in another jurisdiction.

(b) Except as otherwise provided in this section, the following are permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) an unclassified, a class A, or a class B felony under AS 11.41 (Offenses Against the Person);

(2) a crime involving domestic violence that is a felony under AS 11;

(3) a crime that is a felony and involves a victim who was a child under 18 years of age at the time of the conduct, including a crime involving a perpetrator who was a person responsible for the child's welfare; in this paragraph, "person responsible for the child's welfare" has the meaning given in AS 47.17.290 ;

(4) a crime under AS 11.41.220 (Assault in the Third Degree);

(5) a crime under AS 11.41.460 (Indecent Exposure in the Second Degree);

(6) a crime under AS 11.46.400 or 11.46.410 (Arson in the First or Second Degree);

(7) a crime under AS 11.51 (Offenses Against the Family and Vulnerable Adults) as follows:

(A) AS 11.51.100 (Endangering the Welfare of a Child in the First Degree);

(B) AS 11.51.200 (Endangering the Welfare of a Vulnerable Adult in the First Degree);

(C) AS 11.51.210 (Endangering the Welfare of a Vulnerable Adult in the Second Degree);

(8) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.835 (Failure to Register as a Sex Offender or Child Kidnapper in the First Degree);

(B) AS 11.56.840 (Failure to Register as a Sex Offender or Child Kidnapper in the Second Degree);

(9) a crime under AS 11.61 (Offenses Against Public Order) as follows:

(A) AS 11.61.123 (Indecent Viewing or Photography);

(B) AS 11.61.125 (Distribution of Child Pornography);

(10) a crime under AS 11.66 (Offenses Against Public Health and Decency) as follows, if the person induced or caused to engage in prostitution was under 18 years of age at the time of the offense:

(A) AS 11.66.110 (Promoting Prostitution in the First Degree);

(B) AS 11.66.120 (Promoting Prostitution in the Second Degree);

(C) AS 11.66.130 (Promoting Prostitution in the Third Degree);

(11) any sex offense, as defined in AS 12.63.100 , that is not already listed in this subsection;

(12) two or more class B felonies that are not included in this subsection.

(c) The following are 10-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41.260 (Stalking in the First Degree);

(2) a crime under AS 11.46 (Offenses Against Property) as follows:

(A) AS 11.46.120 (Theft in the First Degree);

(B) AS 11.46.280 (Issuing a Bad Check), if the crime is a class B felony;

(C) AS 11.46.285 (Fraudulent Use of an Access Device), if the crime is a class B felony;

(D) AS 11.46.300 (Burglary in the First Degree);

(E) AS 11.46.475 (Criminal Mischief in the First Degree);

(F) AS 11.46.480 (Criminal Mischief in the Second Degree);

(G) AS 11.46.500 (Forgery in the First Degree);

(H) AS 11.46.565 (Criminal Impersonation in the First Degree);

(I) AS 11.46.600 (Scheme to Defraud);

(J) AS 11.46.730 (Defrauding Creditors), if the crime is a class B felony;

(3) a crime under AS 11.56.807 (Terroristic Threatening in the First Degree), if it is a crime involving domestic violence;

(4) a crime under AS 11.61 (Offenses Against Public Order) as follows:

(A) AS 11.61.190 (Misconduct Involving Weapons in the First Degree);

(B) AS 11.61.195 (Misconduct Involving Weapons in the Second Degree);

(C) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A or B felony;

(5) a crime under AS 11.66.110 (Promoting Prostitution in the First Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;

(6) a crime under AS 11.71.010 - 11.71.030 (Misconduct Involving a Controlled Substance in the First, Second, or Third Degree);

(7) a crime under AS 11.73.030 (Delivery of an Imitation Controlled Substance to a Minor);

(8) a class B felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);

(9) a class C felony under AS 28.35.030 (n) (Operating a Vehicle, Aircraft, or Watercraft While Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, for operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance;

(10) a class C felony under AS 28.35.032 (p) (Refusal to Submit to Chemical Test), if the individual has had two or more convictions since January 1, 1996, and within the 10 years preceding the date of the present offense, or if punishment under AS 28.35.030 (n) or 28.35.032(p) was previously imposed within the last 10 years.

(d) The following are five-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.41 (Offenses Against the Person) as follows:

(A) AS 11.41.230 (Assault in the Fourth Degree);

(B) AS 11.41.250 (Reckless Endangerment);

(C) AS 11.41.270 (Stalking in the Second Degree);

(D) AS 11.41.330 (Custodial Interference in the Second Degree);

(E) AS 11.41.530 (Coercion);

(2) a class C felony under AS 11.46 (Offenses Against Property);

(3) a crime under AS 11.51 (Offenses Against Family and Vulnerable Adults) as follows:

(A) AS 11.51.110 (Endangering the Welfare of a Child in the Second Degree);

- (B) AS 11.51.120 (Criminal Nonsupport), if the crime is a class C felony;
- (C) AS 11.51.121 (Aiding the Nonpayment of Child Support in the First Degree);
- (D) AS 11.51.130 (Contributing to the Delinquency of a Minor);
- (4) a crime under AS 11.56 (Offenses Against Public Administration) as follows:
 - (A) AS 11.56.765 (Failure to Report a Violent Crime Committed Against a Child);
 - (B) AS 11.56.810 (Terroristic Threatening in the Second Degree), if it is a crime involving domestic violence;
 - (C) AS 11.56.815 (Tampering With Public Records in the First Degree);
- (5) a crime under AS 11.61 (Offenses Against Public Order) as follows:
 - (A) AS 11.61.130 (Misconduct Involving a Corpse);
 - (B) AS 11.61.140 (Cruelty to Animals);
 - (C) AS 11.61.145 (Promoting an Exhibition of Fighting Animals), if the crime is a class C felony;
 - (D) AS 11.61.200 (Misconduct Involving Weapons in the Third Degree);
 - (E) AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class C felony;
 - (F) AS 11.61.250 (Unlawful Furnishing of Explosives);
- (6) a crime under AS 11.66.120 (Promoting Prostitution in the Second Degree), if the person who was induced or caused to engage in prostitution was 18 years of age or older at the time of the offense;
- (7) a crime under AS 11.71.040 (a)(1), (2), (5), (6), (7), (8), or (10) (Misconduct Involving a Controlled Substance in the Fourth Degree);
- (8) a class C felony under AS 11.73 (Imitation Controlled Substances);
- (9) a serious offense as defined in AS 12.62.900 , except for
 - (A) a serious offense included in (b) or (c) of this section; and
 - (B) an offense under AS 11.61.110 (Disorderly Conduct);
- (10) a class C felony under AS 21.36.360 (Fraudulent or Criminal Insurance Acts);
- (11) a felony under AS 47.30.815 (Bad Faith Initiation of an Involuntary Mental Commitment Proceeding).

(e) The following are three-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.46 (Offenses Against Property) as follows:

(A) AS 11.46.140 (Theft in the Third Degree);

(B) AS 11.46.320 (Criminal Trespass in the First Degree), if it is a crime involving domestic violence;

(C) AS 11.46.430 (Criminally Negligent Burning), if it is a crime involving domestic violence;

(D) AS 11.46.484 (Criminal Mischief in the Fourth Degree), if it is a crime involving domestic violence;

(E) AS 11.46.510 (Forgery in the Third Degree);

(F) AS 11.46.710 (Deceptive Business Practices), if the crime is a class A misdemeanor;

(2) a crime under AS 11.51.120 (Criminal Nonsupport), if the crime is a class A misdemeanor;

(3) a crime under AS 11.56 (Offenses Against Public Administration) as follows:

(A) AS 11.56.740 (Violating a Protective Order), if it is a crime involving domestic violence;

(B) AS 11.56.745 (Interfering With a Report of a Crime Involving Domestic Violence);

(4) a crime under AS 11.61.240 (Criminal Possession of Explosives), if the crime is a class A misdemeanor.

(f) The following are one-year barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) a crime under AS 11.46.486 (Criminal Mischief in the Fifth Degree), if it is a crime involving domestic violence;

(2) a crime under AS 11.56.750 or 11.56.755 (Unlawful Contact in the First or Second Degree);

(3) a crime under AS 11.61.120 (Harassment), if it is a crime involving domestic violence.

(g) If an individual does not pass a criminal history check as a result of a barrier crime established in this section, the individual is prohibited from associating with an entity or provider in a manner described in 7 AAC 10.900(b) , unless the department grants a variance under 7 AAC 10.935.

(h) If an individual is charged with a barrier crime, that individual is barred from any contact with recipients of care during the pendency of the charge, unless the department grants a variance under 7 AAC 10.935. The crime charged ceases to be a barrier under this section on the date that the

(1) individual is acquitted of that crime;

(2) charge is dismissed; or

(3) district attorney's office decides not to prosecute the charge.

(i) Except as otherwise provided in this section, the barrier times listed in this section begin to run from the date that an individual was charged with or convicted of the crime, whichever period ends at a later date. If the individual is subject to a judgment of a court related to sentencing, probation, or parole, the individual is barred as described in (a)(1) of this section for the barrier time listed in this section or until the individual has fully complied with the conditions of the sentencing, probation, or parole, whichever period is longer.

(j) If an individual is convicted of a lesser crime than was originally charged, the length of time an individual is barred will be based upon the crime for which the individual was convicted.

(k) If an entity or individual is also subject to federal criminal history check requirements, and the federal standards, including standards related to civil findings, are more stringent than those set out in this section, the federal standards apply.

(l) For the purpose of determining whether a person is convicted of a single offense or of multiple offenses, the provisions of AS 12.55.145 (a)(1)(C) apply.

(m) In this section,

(1) "charged with" means a person

(A) has been indicted by information or presentment for an offense, or has been arrested and provided a uniform summons and complaint for an offense; and

(B) is awaiting adjudication or dismissal of the matter, or a decision by the district attorney's office not to prosecute;

(2) "convicted" or "conviction" means a judgment entered by a court of competent jurisdiction in this state or another jurisdiction, either upon the entry of a plea, or after a bench or jury trial; "convicted" or "conviction"

(A) includes a suspended imposition of sentence, even if the conviction is formally set aside under AS 12.55.085 ; and

(B) does not include an executive order of clemency, or a record that has been expunged by order of a court.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300
AS 47.05.340

AS 47.05.310
AS 47.32.010

AS 47.05.320
AS 47.32.030

7 AAC 10.915. Criminal history check

(a) The department will screen a request for a criminal history check through the

(1) centralized registry established under 7 AAC 10.955 to determine whether a barrier condition exists for the individual who is the subject of the criminal history check;

(2) registry of certified nurse aides under AS 08.68.333 ;

(3) central registry of sex offenders and child kidnappers under AS 15.65.087 ;

(4) United States Department of Health and Human Services, Office of the Inspector General database of individuals and entities excluded under 42 U.S.C. 1320a-7 and 1320c-5 (secs. 1128 and 1156 of the Social Security Act); and

(5) any other registry or database determined by the department to be relevant to the screening being conducted for an individual, including any registry or database maintained by another state where that individual has resided.

(b) in addition to its review under (a) of this section, the department will review the criminal justice information supplied by the Department of Public Safety, court or other applicable government agency records, and the national criminal history record check supplied by the Federal Bureau of Investigation, to determine whether a barrier crime exists for the individual who is the subject of the criminal history check.

(c) If, after reviewing all available information described in (a) and (b) of this section, the department determines that a barrier crime or condition does not exist, the department will notify the entity or provider that submitted the request, and the individual who was the subject of the criminal history check, that the individual passed the criminal history check. The department will include in the notification the following:

(1) the period during which the criminal history check is valid, unless revoked or rescinded under this section;

(2) a statement that the valid criminal history check is conditioned upon the individual continuing to meet the applicable standards of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990;

(3) a statement that, if the individual ceases to be associated with the entity or provider in a manner described in 7 AAC 10.900(b) ,

(A) the individual's continued compliance with the applicable standards of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 must be verified by the department in accordance with 7 AAC 10.910(e) before that individual may become associated with another entity or provider, or re-associated with the same entity or provider; and

(B) a time period during which the individual is not associated with an entity or provider that is 100 days or longer is subject to (g) of this section.

(d) If, while conducting a criminal history check, the department determines that a barrier crime or condition exists, the department will notify the

(1) entity or provider that submitted the request under 7 AAC 10.910; the department will include in the notification the following statements:

(A) that the department has determined a barrier crime or condition exists; the department will not identify the crime or condition, but will identify the applicable barrier time under 7 AAC 10.905 or 7 AAC 10.955, as applicable;

(B) that the individual who was the subject of the criminal history check has been given an opportunity to challenge the department's determination under 7 AAC 10.950 if the individual believes the determination was based on erroneous information, or if the individual has additional information for the department to consider;

(C) that if the individual is willing to disclose the barrier crime or condition to the entity or provider, and if the entity or provider continues to desire a valid criminal history check for that individual, the entity or provider may request a variance, if allowed under 7 AAC 10.930; and

(2) individual who was the subject of the criminal history check; the department will include in the notification the following:

(A) the reason for the determination, including identification of the barrier crime or condition and the applicable barrier time under 7 AAC 10.905;

(B) a statement that if the individual wishes to disclose the barrier crime or condition to the entity or provider that submitted the request, the entity or provider may be able to obtain a variance, if allowed under 7 AAC 10.930;

(C) a statement that if the individual believes there is an error in the information relied upon by the department, or if the individual has additional information for the department to consider, the individual may submit a request for reconsideration under 7 AAC 10.950.

(e) For each request for a criminal history check processed under this section, the department will mark in APSIN the name of the individual who was the subject of the criminal history check. If the department receives notification under APSIN of law enforcement activity for an individual, the department will review the information. If the department determines that the activity creates a barrier under 7 AAC 10.905, the department will immediately notify the entity or provider and the individual. The department will include in the notification information advising the entity or provider and the individual that

(1) the department intends to revoke the valid criminal history check in accordance with 7 AAC 10.945; the department will not identify the barrier crime or condition in the notice to the entity or provider, but will identify the crime or condition in the notice to the individual;

(2) the individual may request reconsideration under 7 AAC 10.950 if the individual believes there was an error in the information relied upon by the department; and

(3) if the individual wishes to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930.

(f) Except as provided otherwise in this subsection, an entity or provider must, within 24 hours after receiving notification under (d) or (e) of this section, terminate association with the individual in accordance with 7 AAC 10.960. If the entity or provider requests a variance under 7 AAC 10.930, or if the individual requests reconsideration under 7 AAC 10.950, the individual may remain associated with the entity or provider, pending a decision on the request, if

(1) the individual is removed from direct contact with recipients of services; and

(2) the entity or provider ensures that the individual is provided with direct supervision if the individual is present in any area where services are provided, during hours of operation.

(g) If an individual remains out of association with an entity or provider for 100 days or longer, the department will revoke a valid criminal history check without prior notice. A new criminal history check is required if the individual wishes to become associated with any entity or provider in a manner described in 7 AAC 10.900(b) .

(h) If an individual with a valid criminal history check ceases to be associated with an entity or provider, and wishes to have the individual's name unmarked in APSIN, the individual shall submit a written request to the department that the valid criminal history check be rescinded. The department will send a written acknowledgment of the rescission to the individual and to the entity or provider with whom the individual was most recently associated.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300
AS 47.05.330
AS 47.32.030

AS 47.05.310
AS 47.05.340

AS 47.05.320
AS 47.32.010

7 AAC 10.920. Provisional valid criminal history check

(a) The department may issue notification of a provisional valid criminal history check after screening the individual under 7 AAC 10.915(a) and reviewing the criminal justice information supplied by the Department of Public Safety, if a barrier crime or condition is not discovered in that screening and review and if

(1) the department determines that its further review time might unduly delay the process;

(2) an entity or provider has requested an expedited review and has

(A) included justification for the expedited review;

(B) submitted, at a minimum, the documents required under 7 AAC 10.910(b) (1) and (2); and

(C) agreed to submit within 30 days the fingerprints required under 7 AAC 10.910(b) (3) and any items required under 7 AAC 10.910(b) (4) - (6) that were not included with the request; or

(3) a request for a criminal history check does not include the required sets of fingerprints because fingerprinting acceptable to the Department of Public Safety is not available within 100 miles by road, and the entity or provider agrees to submit within 30 days the fingerprints required under 7 AAC 10.910(b) (3) and any items required under 7 AAC 10.910(b) (4) - (6) that were not included with the request.

(b) Notification of a provisional valid criminal history check issued under this section is valid until the results of a fingerprint-based criminal history check are processed under 7 AAC 10.915, unless revoked under this section. If the entity or provider fails to submit fingerprints and other required items within 30 days, or the individual does not pass the criminal history check, the provisional valid criminal history check is automatically revoked, and the entity or provider must terminate association with the individual in accordance with 7 AAC 10.960.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.925. Monitoring and notification requirements

(a) An entity or provider shall monitor to ensure that all individuals associated with the entity or provider in a manner described in 7 AAC 10.900(b) continue to meet the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990. The entity or provider shall require each individual for whom a criminal history check is required to report to the entity or provider within 24 hours, or the next business day if the individual is

(1) charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(2) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry.

(b) In addition to the reporting requirements of 7 AAC 10.955(c) for the centralized registry, the entity or provider shall notify the department by telephone, by electronic mail, by facsimile, by letter, or in person within

(1) 24 hours, or the next business day, after the entity or provider has knowledge that an individual associated with the entity or provider has been

(A) arrested for, charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a barrier crime listed in 7 AAC 10.905; or

(B) is the subject of a matter that must be reported under 7 AAC 10.955(c) for the centralized registry; or

(2) 14 days after any change in association with the entity or provider for an individual who has a valid criminal history check or is the subject of a provisional valid criminal history check, including a change that involves an individual

(A) whose association described in 7 AAC 10.900(b) has been terminated; or

(B) who has not been associated with the entity or provider for 61 days or more, but becomes re-associated within 100 days.

(c) Failure to notify the department as required under this section may result in an enforcement action, including suspension or revocation of the license, certification, approval, or finding of eligibility to receive payments.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.930. Request for a variance

(a) Except for a crime or condition listed in (g) of this section, an entity or provider notified under 7 AAC 10.915(d) that a barrier crime or condition exists may request a variance under this subsection. The request must be submitted to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted no later than 30 days after the entity or provider receives notice under 7 AAC 10.915(d) , or, if the individual who was the subject of the criminal history check submits a request for reconsideration as allowed under 7 AAC 10.915(d) (2)(C), no later than 30 days after the department issues its decision on reconsideration under 7 AAC 10.950(b) (3), whichever date is later. The request must be submitted on a form provided by the department, and must include the following:

(1) a comprehensive rationale for granting a variance;

(2) a demonstration of how the health, safety, and welfare of recipients of services will be adequately protected;

(3) copies of all known information relevant to determining whether the health, safety, and welfare of recipients of services are adequately protected, including the following information regarding the individual for whom a variance is sought:

(A) a copy, as applicable, of that individual's record of

(i) protective orders issued or filed under AS 18.66 (Domestic Violence and Sexual Assault) or a substantially similar law or ordinance of another jurisdiction;

- (ii) conviction;
 - (iii) indictment or presentment, or of charging by information or complaint;
 - (iv) having been charged with a crime, without subsequent conviction;
 - (v) having been charged with a crime that was reduced to a lesser charge;
 - (vi) having been charged with a crime for which a suspended imposition of sentence was granted by the court; and
 - (vii) any circumstance that led to a barrier condition under 7 AAC 10.955;
- (B) if the individual was incarcerated,
- (i) a copy of the order from the local, state, or federal jurisdiction that released the individual from incarceration;
 - (ii) the date of release from incarceration; and
 - (iii) any terms and conditions of parole;
- (C) if the individual was sentenced and, as a part of that sentence, the individual was placed on supervised or unsupervised probation, a copy of the terms and conditions of probation;
- (D) the extent, nature, and seriousness of the following:
- (i) the individual's offense and past criminal record;
 - (ii) a behavioral health problem if it exists;
 - (iii) a domestic violence problem if it exists;
 - (iv) any circumstance that led to a barrier condition under 7 AAC 10.955;
- (E) the age of the individual at the time of the offense, problem, or circumstance;
- (F) the amount of time that has elapsed since the most recent offense, problem, or circumstance;
- (G) evidence of rehabilitation, prevention, or treatment efforts;
- (H) other evidence of the individual's present fitness, including at least two letters of recommendation from credible persons who are aware of the individual's criminal and civil history, behavioral health problem, or domestic violence problem, and who recommend that a variance be granted; any letters must be from persons who are unrelated to the individual for whom the variance is requested and who are not associated with the entity or provider that submitted the request for a variance; nothing in this subparagraph precludes the entity or provider from submitting additional letters of recommendation;

(l) if the individual is an employee or volunteer, or a potential employee or volunteer, information related to job responsibilities that would be performed, hours and days of service, whether the individual would be in contact with recipients of services, and plans for supervision, including whether the individual would be subject to direct supervision while on the premises during hours of operation;

(4) for a request submitted under (k) of this section, in addition to the information and documentation required under (1) - (3) of this subsection, the request must include

(A) a detailed description of any mitigating circumstances that were involved at the time of the offense;

(B) a description of the individual's educational and employment history; and

(C) the following information, if applicable:

(i) evidence that the individual is licensed under AS 08, or became licensed after the individual was convicted of the offense or was listed on the centralized registry;

(ii) evidence that the individual passed a criminal history check conducted by the department before February 9, 2007, but after the individual was convicted of the offense;

(iii) evidence that the individual was issued a variance by the department before February 9, 2007, but after the individual was convicted of the offense for which the variance was issued.

(b) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for the entity or provider seeking a variance will review each request for a variance received by that office and will

(1) make a written recommendation to the variance committee appointed under 7 AAC 10.935 to grant or deny the request;

(2) include the reasons for the recommendation; and

(3) recommend any conditions that should be placed on any variance issued.

(c) If the individual was convicted of a lesser charge, in the department's review under (b) of this section, the department will consider information regarding the original charge in making its recommendation to the variance committee, including whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under (g) of this section.

(d) If the department granted a variance for an offense revealed in a fingerprint-based criminal history check conducted six or more years before February 9, 2007, and if the offense for which the variance was granted is not a permanent barrier under 7 AAC 10.905, the entity or provider must submit a new request for a variance, if allowed under this section, at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments. Except as provided in

(h) and (i) of this section, if the offense for which the department granted the variance is a permanent barrier under 7 AAC 10.905, the variance is void and the entity must terminate association with the individual in accordance with 7 AAC 10.960.

(e) If the department granted a variance for a barrier condition described in 7 AAC 10.955 six or more years before February 9, 2007, the entity or provider must submit a new request for a variance at the time of application for renewal of that entity's current license, certification, approval, or finding of eligibility to receive payments.

(f) The department will not grant a variance from the requirement in AS 47.05.310 for conducting a criminal history check for an individual who has regular contact with recipients of services. For any other individual subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, an entity or provider may request a variance from the requirement to conduct a criminal history check by submitting a written request to the department office responsible for that entity's or provider's licensing, certification, approval, or finding of eligibility to receive payments. The request must be submitted on a form provided by the department and must include a comprehensive rationale for the request and demonstrate that the health, safety, and welfare of recipients of services will be adequately protected.

(g) Except as provided in (h) - (k) of this section, the department will not grant a variance for a

(1) conviction for an offense that is a permanent barrier under 7 AAC 10.905; or

(2) crime or civil finding for which federal law prohibits certain approvals, or restricts payment of benefits, during the most stringent barrier period set by federal law for that crime or civil finding; for the purpose of this paragraph,

(A) "federal law" includes an offense described in

(i) 42 U.S.C. 670 - 679b (secs. 470 - 479A of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(ii) 42 U.S.C. 1320a-7(a) (sec. 1128(a) of the Social Security Act), revised as of August 21, 2006, and adopted by reference;

(iii) 45 C.F.R. 1356.30, revised as of October 1, 2005, and adopted by reference; and

(iv) another applicable federal statute or regulation; and

(B) the prohibition applies to all entities and providers subject to 7 AAC 10.900 - 7 AAC 10.990, regardless of whether the federal law is directly applicable to only one of those entities or providers.

(h) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual convicted of a permanent barrier crime listed in (i) of this section, if

(1) a behavioral health problem was a factor in the commission of the crime; and

(2) the individual

(A) is associated in a manner described in 7 AAC 10.900(b) with an entity that provides a treatment program to individuals with a behavioral health problem;

(B) has completed any treatment required by a court; and

(C) has demonstrated a sustained self-directed program of recovery for at least five years, as determined through the assessment of a mental health professional clinician or a substance abuse counselor with at least three years of experience; for purposes of this subparagraph,

(i) "mental health professional clinician" has the meaning given in 7 AAC 43.1990;

(ii) "substance abuse counselor" means a counselor providing services for a substance abuse treatment facility or program certified under 7 AAC 29; and

(iii) "recovery" includes, as applicable, absence of symptoms, stabilization in life domains, compliance with any medical orders, and abstinence from substance use.

(i) For the purpose of (h) of this section, the department may grant a variance for the following permanent barrier crimes, including the attempt, solicitation, or conspiracy to commit any of the following crimes or to violate a law or ordinance of this or another jurisdiction with similar elements:

(1) AS 11.41.200 (Assault in the First Degree);

(2) AS 11.41.210 (Assault in the Second Degree);

(3) AS 11.41.220 (Assault in the Third Degree);

(4) AS 11.41.320 (Custodial Interference in the First Degree);

(5) AS 11.41.460 (Indecent Exposure in the Second Degree);

(6) AS 11.41.500 (Robbery in the First Degree);

(7) AS 11.41.510 (Robbery in the Second Degree);

(8) AS 11.41.520 (Extortion);

(9) AS 11.46.400 (Arson in the First Degree);

(10) AS 11.46.410 (Arson in the Second Degree).

(j) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual adjudicated as a delinquent for a permanent barrier crime under 7 AAC 10.905(b) .

(k) Notwithstanding the prohibition in (g)(1) of this section, the department may grant a variance for an individual convicted of a permanent barrier crime listed under 7 AAC 10.905. A request under this subsection is subject to the review criteria set out in 7 AAC

10.935(c) (10) and additional consideration under 7 AAC 10.935(e) by the director of the department office responsible for the licensing of, certification of, approval for, or finding of eligibility to receive payments for the entity or provider seeking the variance.

History: Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.935. Review of request for a variance

(a) The commissioner will appoint three or more department employees to serve as a variance review committee to review requests for variances submitted under 7 AAC 10.930. The commissioner will include at least one employee from each department office responsible for licensing, certification, approval, or finding of eligibility to receive payments, but will not include an employee substantively involved in any recommendation to the committee made under 7 AAC 10.930(b) .

(b) In its review of a request for a variance, the review committee shall determine whether a variance is prohibited under 7 AAC 10.930(f) or (g). If a variance is prohibited, the review committee shall clearly indicate the prohibition in its recommendation under (e) of this section.

(c) In its review of a request for a variance, the review committee shall

(1) consider the recommendations made by the department office under 7 AAC 10.930(b) ;

(2) consider the information supplied with the request and any other relevant information available to the department;

(3) determine whether the individual charged with a crime was subsequently convicted;

(4) if the individual was convicted of a lesser charge, determine whether the original charge was a permanent barrier crime or condition for which a variance would be prohibited under 7 AAC 10.930(g) ;

(5) determine whether any suspended imposition of sentence is still in effect, and review the nature of any applicable conditions;

(6) verify, as applicable, that

(A) conditions of parole or probation were met;

(B) court-ordered restitution has been made, or payments are current; and

(C) treatment, if required by the court, has been completed;

(7) if the crime committed related to financial exploitation, including theft, fraud, and bribery, or involved another form of dishonesty, including perjury and official misconduct, verify that the individual's duties make it unlikely that exploitation or dishonesty could occur with regard to recipients of services;

(8) if the barrier condition related to the abuse, neglect, or exploitation of a child or vulnerable adult, verify that the individual's duties make it unlikely that abuse, neglect, or exploitation could occur with regard to recipients of services;

(9) consider mitigating factors, including whether the individual has been employed by the entity or provider for a substantial period, has performed duties in a responsible and trustworthy manner, and has not been the subject of any complaint from a recipient of services or a representative of a recipient of services; and

(10) for a request for a variance submitted under 7 AAC 10.930(k) , in addition to the matters described in (1) - (9) of this subsection, the review committee shall consider

(A) whether there were mitigating circumstances involved at the time of the offense;

(B) the individual's educational and employment history;

(C) any current letters of recommendation from employers or other individuals submitted in addition to the minimum required under 7 AAC 10.930(a) (3)(H);

(D) whether the individual is licensed under AS 08, or became licensed after the individual was convicted of the offense or listed on the centralized registry;

(E) whether the individual passed a criminal history check conducted by the department before February 9, 2007, but after the individual was convicted of the offense; and

(F) whether the individual was issued a variance by the department before February 9, 2007, but after the individual was convicted of the offense for which the variance was issued.

(d) The review committee may require the individual for whom a variance is sought to appear in person or by telephone for an interview.

(e) If the review committee, after its review of available information and documentation, determines that the health, safety, and welfare of recipients of services will be adequately protected, the review committee shall recommend that the commissioner grant the request for a variance. If the review committee determines that the health, safety, and welfare of recipients of services will not be adequately protected, the review committee shall recommend that the commissioner deny the request for a variance. For a request for a variance submitted under 7 AAC 10.930(k) , the review committee shall submit its recommendation to the director of the department office responsible for the licensing of, certification of, approval for, or finding of eligibility to receive payments for the entity or provider seeking the variance. The director shall consider the review committee's recommendation and make a written recommendation that the commissioner grant or deny the request.

(f) The commissioner will consider a recommendation made under (e) of this section and will issue a decision on a request for a variance within 30 days after receiving all

information required under 7 AAC 10.930. The commissioner will deliver a copy of the decision to grant or deny the request for a variance to the requesting entity or provider by mail or facsimile. The commissioner will include in the decision to deny a request the reasons for the denial, and will advise the entity or provider of the right to request reconsideration of the decision under 7 AAC 10.950. A copy of the decision will be provided to the department office responsible for conducting criminal history checks, the department office responsible for maintaining the centralized registry established under 7 AAC 10.955, and the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments.

(g) In a variance granted under this section, the department will not identify the individual for whom the variance was requested, but will specify the barrier crime or condition for which the variance was granted, and will set out the terms and conditions of the variance, including an expiration date not to exceed the expiration date of the license, certification, approval, or finding of eligibility to receive payments applicable to the entity or provider that requested the variance.

(h) A variance may not be transferred to another entity or provider. If the individual for whom the department granted a variance under this section remains associated with the entity or provider that requested the variance, and the variance is not revoked under (i) of this section, the entity or provider need not submit a new variance request each time it submits its application for renewal of its license, certification, approval, or finding of eligibility to receive payments, but must request a new criminal history check for that individual with each application.

(i) The department office responsible for the licensing, certification, approval, or finding of eligibility to receive payments for an entity or provider will, in accordance with 7 AAC 10.945, immediately revoke a variance granted under this section if

(1) the department learns that it granted the variance based on false information provided by the individual to whom the variance applies or by the entity or provider that requested the variance; or

(2) the individual to whom the variance applies

(A) violates a term or condition of the variance;

(B) subsequently becomes subject to AS 47.05.310 (c), or is charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime listed in 7 AAC 10.905, or a similar crime in another jurisdiction; or

(C) ceases to be associated with the entity or provider that requested the variance.

History: Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.940. Posting of variance decision required

If the department grants a variance under 7 AAC 10.935, the entity or individual service provider shall post a copy of the variance decision with the copy of the license, certification, approval, or finding of eligibility to receive payments that was issued by the department, in a conspicuous place where the copy of the variance can be readily viewed by persons interested in obtaining the services offered by the entity or provider.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.945. Revocation of valid criminal history check or variance

(a) Subject to AS 47.32, if the department decides to revoke a valid criminal history check issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider, and to the individual for whom the criminal history check was conducted. The notice will include the reasons for the department's decision and will advise the individual of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the individual unless a request for reconsideration is submitted.

(b) Subject to AS 47.32, if the department decides to revoke a variance issued under 7 AAC 10.900 - 7 AAC 10.990, the department will provide written notice of revocation to the entity or provider to whom the variance was issued, and to the individual who was the subject of the variance. The notice will include the reasons for the department's decision and will advise the entity or provider of the right to request reconsideration under 7 AAC 10.950. A notice of revocation issued under this section is effective 30 days after it is received by the entity or provider unless a request for reconsideration is submitted.

(c) Nothing in this section precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of a recipient of services is threatened.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.950. Request for reconsideration

(a) A request for reconsideration of a department decision under 7 AAC 10.900 - 7 AAC 10.990 must be submitted within 30 days after the requestor receives the notice of the decision. The request for reconsideration must include

(1) the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a clear description of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and any proposed alternatives; and

(C) copies of any documents or other information that would assist the department in its review.

(b) After reviewing a request for reconsideration of the

(1) commissioner's decision to deny a request for a variance under 7 AAC 10.935(f) , the commissioner will notify the requestor of the commissioner's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision;

(2) department's decision to revoke a valid criminal history check under 7 AAC 10.910(g) or 7 AAC 10.915(e) , or a variance under 7 AAC 10.935(i) , the department office that made the decision to revoke will notify the requestor of that office's decision on reconsideration in writing within 30 days after receiving the request, and will state the reasons for that decision; or

(3) department's determination under 7 AAC 10.915(d) that a barrier crime or condition exists, the department office responsible for conducting criminal history checks will, within 30 days after receiving the request, notify in writing the

(A) requestor of that office's decision on reconsideration and state the reasons for that decision; and

(B) entity or provider that submitted the request for a criminal history check under 7 AAC 10.910 that, if the decision on reconsideration confirms the determination that a barrier crime or condition exists, and if the individual is willing to disclose the barrier crime or condition to the entity or provider, the entity or provider may request a variance, if allowed under 7 AAC 10.930, within 30 days after receiving notice under this subparagraph.

(c) A decision under (b)(1) and (b)(2) of this section is a final agency decision for purposes of seeking judicial review. A decision under (b)(3) of this section is a final agency decision unless the department grants a variance under 7 AAC 10.935.

(d) A copy of a decision on reconsideration under this section will be provided to the department office responsible for conducting criminal history checks, and to the department office responsible for licensing, certification, approval, or a finding of eligibility to receive payments.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.955. Centralized registry

(a) A centralized registry is established in the department to accomplish the purpose of AS 47.05.330 as that purpose relates to an individual

(1) who seeks to be or to remain associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b) ;

(2) whose name appears on the centralized registry because of a matter described in AS 47.05.330 (b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult; and

(3) whose name appears on the centralized registry because of a matter described in AS 47.05.330 (b)(1)(B) involving medical assistance fraud.

(b) An individual whose name appears on the centralized registry may not be associated with an entity or individual service provider in a manner described in 7 AAC 10.900(b) unless a variance is granted under 7 AAC 10.935.

(c) An entity or individual service provider that is subject to AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 shall, using a form prescribed by the department, submit to the department reports as required or allowed under AS 47.05.330 for any matter described in (a)(2) or (3) of this section.

(d) Upon receipt of a report required under (c) of this section, the department will enter the information on the centralized registry as required by AS 47.05.330 (b).

(e) Separately or in conjunction with an investigation or audit under AS 47.05.200 , AS 47.10, AS 47.24, or AS 47.62, the department will investigate a report of abuse, neglect, or exploitation submitted under (c) of this section. If, after its investigation, the department makes a substantiated finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or individual service provider that made the report, and the individual who is the subject of the investigation, that the department has made a substantiated finding, and that it intends to place the finding in the centralized registry. In the notice, the department will

(1) describe the nature of the substantiated finding;

(2) identify each statute or regulation that supports the finding;

(3) state the effective date for placement in the registry; and

(4) advise that the individual who is the subject of the investigation may request a hearing under (f) of this section.

(f) An individual who is the subject of an investigation that results in a substantiated finding against the individual may request a hearing from the department within 30 days after receipt of the notice described in (e) of this section. A request under this subsection must be submitted to the department's office responsible for maintaining the centralized registry. The request must be in writing, must include the individual's reasons for believing the department's finding to be in error, and must be accompanied by any relevant documentation to support those reasons.

(g) If the department determines that questions of material fact, if any, raised in a request for hearing under (f) of this section and relevant to the department's substantiated finding, were previously decided in a civil or criminal court action, or in an administrative hearing conducted in accordance with AS 44.62.330 - 44.62.630 (Administrative Procedure Act), and that under the facts as previously decided, the individual committed abuse, neglect, or exploitation, the department will send the individual written notice that the department intends to issue a summary decision to dismiss the individual's claim. The individual may submit a written objection to the department's proposed dismissal, identifying any issue of material fact that the individual believes still to be in dispute, providing reasons why the individual disagrees with the department's proposed dismissal, and providing any relevant documentation to support those reasons. If the department does not receive a written objection within 30 days after the individual received notice of the department's proposed dismissal, or if the department rejects the individual's objection,

(1) the department's substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry; if the previous court action or hearing resulted in a decision, order, judgment, or adjudication that the individual committed abuse, neglect, or exploitation, the department will also enter the information in the centralized registry; and

(2) the department will give notice as required in (k) of this section.

(h) If a hearing is requested under (f) of this section,

(1) the department will hold the hearing within 45 days after receiving the request; and

(2) the entity or provider may allow the individual to remain associated with the entity or provider, pending a decision on the request, if

(A) the individual is removed from direct contact with individuals receiving services; and

(B) the entity or provider ensures that the individual has supervised access if present in any area where services are provided, during hours of operation.

(i) If a hearing is requested under (f) of this section, the department will conduct the hearing in accordance with AS 44.62.330 - 44.62.630 (Administrative Procedure Act). The hearing officer shall issue a decision within 30 days after the hearing is concluded. The decision is a final department decision for purposes of judicial review. If the hearing officer finds by a preponderance of the evidence that the individual who is the subject of the hearing committed abuse, neglect, or exploitation, the hearing officer shall submit this information to the department office responsible for maintaining the centralized

registry. The department will enter the information on the centralized registry and give notice as required in (k) of this section.

(j) If the individual who is the subject of the investigation does not request a hearing within 30 days after receipt of the notice described in (e) of this section, or waives the right to a hearing, the substantiated finding becomes a final department decision for purposes of judicial review, and the department will enter the information in the centralized registry. The department will give notice as required in (k) of this section.

(k) If a hearing or waiver of hearing under this section results in a finding that an individual committed abuse, neglect, or exploitation, the department will notify any entity or provider that made a report under (c) of this section, and the individual who is the subject of the hearing, of the hearing or waiver results and of the entry of the information on the centralized registry. The department will notify the individual of the right to request that the department delete or modify the information on the centralized registry to correct an inaccuracy in accordance with AS 47.05.330 (j).

(l) If, after an investigation in accordance with AS 47.05.330 (j) to determine whether there is an inaccuracy related to information on the centralized registry, the department determines that the information is correct, the department will notify the individual who made the request that the department has denied the individual's request to delete or modify the information.

(m) The department will remove from the centralized registry information regarding a finding that an individual has committed abuse, neglect, or exploitation if the department receives notice that the individual has died.

(n) For purposes of this section, "substantiated finding" means a determination made by the department after an investigation that, based on available information, it is more likely than not that abuse, neglect, or exploitation occurred.

History: Eff. 2/9/2007, Register 181; am 2/13/2008, Register 185

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.960. Termination of association

(a) Except as provided in (b) and (c) of this section, if an entity or provider is required to terminate association with an individual, the entity or provider shall

(1) notify the individual that the individual's employment, volunteer services, or other association with the entity or provider under 7 AAC 10.900(b) is ended, effective immediately, unless the entity or provider takes immediate action under (2) of this subsection; the entity or provider must notify the individual under this paragraph

(A) immediately, if the individual is present at the entity or premises where the provider is providing services; or

(B) before or upon the individual's next arrival at the entity; or

(2) if the entity or provider intends to request a variance under 7 AAC 10.930, immediately reassign the duties and responsibilities of that individual so that the individual

(A) does not have contact with recipients of services;

(B) cannot access personal or financial records maintained by the entity or provider regarding recipients of services;

(C) has no control over or impact on the financial well-being of a recipient of services, unless the only recipient whose financial well-being is affected is a

(i) relative of the individual who has authorized that individual to make financial decisions for that relative;

(ii) recipient who has executed a power of attorney for that individual to make financial decisions for that recipient; or

(iii) recipient for whom a court has authorized that individual to make financial decisions; and

(D) is provided with direct supervision if present in the entity or premises where the provider is providing services during hours of operation.

(b) If the entity or provider is required to terminate association with an individual who is subject to a union agreement or employment contract that requires more notice than allowed under (a) of this section, the entity or provider shall, within 24 hours after receiving notice to terminate association, deliver a copy of the relevant language of the agreement or contract to the department. The entity or provider shall cooperate with the department in developing an appropriate termination plan for the individual that includes the measures set out in (a)(2)(A) - (D) of this section during the notice period mandated by the agreement or contract.

(c) If the individual for whom termination of association is required is a relative of the operator, administrator, or provider, and resides in the entity or premises where services are provided, termination of association must occur within 24 hours, and the entity or provider shall ensure that the individual

(1) does not have contact with recipients of services; and

(2) is provided with direct supervision if, during that 24-hour period, the individual is present in the entity or premises where the provider is providing services during hours of operation.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

7 AAC 10.990. Definitions

(a) In 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise,

- (1) "APSIN" means the Alaska Public Safety Information Network;
- (2) "barrier time" means the length of time a barrier crime under 7 AAC 10.905 bars an individual from association with an entity or provider under 7 AAC 10.900(b) ;
- (3) "behavioral health problem" means a mental disorder, substance use disorder, or co-occurring disorder;
- (4) "centralized registry" means the centralized registry established in 7 AAC 10.955;
- (5) "certification" has the meaning given "certified" in (b) of this section;
- (6) "commissioner" means the commissioner of health and social services;
- (7) "condition" means a barrier to association under 7 AAC 10.900(b) that results from
 - (A) a matter described in AS 47.05.330 (b)(1)(A) involving the abuse, neglect, or exploitation of a child or vulnerable adult; and
 - (B) the entry of that information in the centralized registry;
- (8) "co-occurring disorder" has the meaning given in 7 AAC 57.990;
- (9) "crime" means barrier crime under 7 AAC 10.905;
- (10) "crime involving domestic violence" has the meaning given in AS 18.66.990 ;
- (11) "criminal justice information" has the meaning given in AS 12.62.900 ;
- (12) "department" means the Department of Health and Social Services;
- (13) "direct supervision" means that the administrator, or a care provider who is at least 18 years of age,
 - (A) is within sight or sound of the individual being supervised;
 - (B) has received the training required under applicable department regulations;
 - (C) is present to observe the individual; and
 - (D) is available to the individual for consultation or assistance;
- (14) "domestic violence problem" means the individual
 - (A) has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for a crime involving domestic violence listed in AS 18.66.990 (3); or

(B) is or has been subject to a protective order issued or filed under AS 18.66 or a substantially similar law or ordinance of another jurisdiction;

(15) "eligibility to receive payments" means eligibility to receive payments that are used for the direct provision of services for the health, safety, and welfare of persons who are served by programs administered by the department; "eligibility to receive payments" does not include payments used solely for administrative costs;

(16) "individual service provider" has the meaning given in AS 47.05.390 ;

(17) "provider" means an individual service provider;

(18) "relative" means an individual who is related to another by marriage, blood relationship, or court decree;

(19) "substance use disorder" has the meaning given in 7 AAC 57.990;

(20) "supervised access" means that the entity or provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of recipients of services;

(21) "terminate association" means to sever an individual's association under 7 AAC 10.900(b) with an entity or provider;

(22) "volunteer" means an individual who regularly or routinely provides services or care, without pay, on behalf of an entity or provider.

(b) Notwithstanding 7 AAC 10.9990, in 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise,

(1) "entity" has the meaning given in AS 47.05.390 ;

(2) "recipient of services" means an individual receiving services from an entity or provider.

(c) In AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, unless the context requires otherwise, "regular contact" means direct interaction with a recipient of services that occurs daily, or less frequently but on a recurring basis.

(d) In AS 47.05.300 (a),

(1) "certified" means certified under 7 AAC 43.1090;

(2) "eligible to receive payments" has the meaning given "eligibility to receive payments" under (a) of this section.

History: Eff. 2/9/2007, Register 181

Authority:

AS 47.05.300

AS 47.05.310

AS 47.05.320

AS 47.05.330

AS 47.05.340

AS 47.32.010

AS 47.32.030

Article 4

Environmental Health and Safety

Section

- 1000. Purpose and applicability.
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7 AAC 10.1000. Purpose and applicability

(a) The purpose of 7 AAC 10.1000 - 7 AAC 10.1095 is to protect public health, safety, and welfare by establishing environmental health and safety standards for entities listed in (b) of this section that are in addition to the requirements of 7 AAC 50, 7 AAC 57, and 7 AAC 75, as applicable.

(b) Subject to (c) of this section, to be licensed by the department, the following entities are subject to the applicable requirements of 7 AAC 10.1000 - 7 AAC 10.1095:

- (1) a residential child care facility, including a residential group home and a residential child care center;
- (2) a foster home or a foster group home;
- (3) a residential psychiatric treatment center;
- (4) a maternity home;
- (5) a child care facility required to be licensed under AS 47.32 and 7 AAC 57;
- (6) an assisted living home.

(c) If an entity is licensed for more than one category of care listed in (b) of this section, the entity is subject to the most stringent requirements applicable to those categories of care, even if an exemption might apply if licensed separately.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.020

AS 47.32.030

AS 47.33.005

AS 47.33.010

7 AAC 10.1002. Caregivers

For purposes of 7 AAC 10.1000 - 7 AAC 10.1095, a caregiver is an individual in an entity whose duties include care, contact, and supervision of adults or children in care. A caregiver does not include

- (1) a parent or other relative of an adult or child in care, unless the parent or other relative is a caregiver or a member of the licensee's household;
- (2) a parent's designee to drop off and pick up a child in care, unless the designee performs the duties of a caregiver;
- (3) an official or individual providing support services to the entity or to an adult or child in care for fewer than five hours a week, such as an infant learning teacher, an attendant for a child identified as having special needs under 7 AAC 57.940, a licenser, a fire marshal, or a food service sponsor;
- (4) an employee of a delivery service who makes deliveries to the entity;
- (5) installation, maintenance, and repair service personnel who are present in the entity for less than two weeks;
- (6) an individual with an ownership or management interest in the entity who makes only occasional visits;
- (7) an occasional guest in the entity;
- (8) an individual residing in any part of the premises that house an entity, if the individual remains or intends to remain in the residence for less than 45 days, in total, in any 12-month period, and does not perform the duties of a caregiver; or
- (9) an individual coming into incidental contact with adults or children in care during an outing away from the entity.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.040

AS 47.14.120

AS 47.32.010

AS 47.32.030

7 AAC 10.1005. Pre-licensing inspection

Subject to AS 47.32.050 , before deciding whether to issue a license to an entity listed in 7 AAC 10.1000(b) , the department may inspect the entity to determine whether the entity is maintained in a manner protective of life, health, safety, and welfare with respect to

- (1) bedrooms for an entity licensed to provide 24-hour or overnight care;
- (2) exits to the outside of the building;
- (3) smoke detectors, carbon monoxide detectors, and fire extinguishers;
- (4) storage and disposition of combustible waste material;
- (5) portable heating mechanisms, if any; and
- (6) other applicable requirements of this chapter or another applicable statute or regulation.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.020
AS 47.32.030	AS 47.32.050	AS 47.32.060
AS 47.33.005	AS 47.33.010	

7 AAC 10.1010. Life and fire safety

(a) An entity listed in 7 AAC 10.1000(b) must comply with the applicable life and fire safety requirements of this section and any additional or more stringent applicable standards established by a municipality to which the state fire marshal has deferred building fire safety inspection and enforcement activities under 13 AAC 50.075(c) .

(b) An entity must meet the requirements of (c) of this section if the entity provides

- (1) 24-hour or nighttime care for six or more adults or children; in this paragraph, "nighttime care" means care between the hours of 10:00 p.m. and 6:00 a.m.; or
- (2) less than 24-hour care for six or more children, including the caregiver's children who are under age 12 or of limited mobility.

(c) An entity described in (b) of this section must

- (1) meet the standards for life and safety specified in 13 AAC 50 and 13 AAC 55; the entity shall keep any information required by those standards available for department inspection;
- (2) obtain any applicable state or municipal building code approval; that approval must also be obtained before making a modification to a licensed entity if the modification is one that requires that approval; for purposes of this paragraph, a state building code approval is an approval required under 13 AAC 50.027 and 13 AAC 55; and

(3) obtain a fire safety inspection report from each state or municipal authority responsible for those inspections, and continue to obtain those reports every two years, or more often if required by the authority; the entity is responsible for any fee charged by the authority for each inspection.

(d) At the time of licensing, the department will inspect an entity licensed to provide care for five or fewer adults or children to determine if the entity meets the applicable requirements of this section. Based on the inspection, or if the department determines that it is necessary for purposes of public health, safety, or welfare, the department will request an advisory inspection report from one or more state or municipal building or fire safety authorities. The entity is responsible for any fee charged by the authority for each inspection.

(e) An entity must have a disaster preparedness and emergency evacuation plan that

(1) includes evacuation procedures that will ensure the complete evacuation of

(A) children in care, including children with limited mobility, within 150 seconds; or

(B) adults in care, including adults with limited mobility, as follows:

(i) if the entity does not have an automatic sprinkler system, the plan must ensure complete evacuation will be accomplished within three minutes;

(ii) if the entity has a central fire alarm system and an automatic retardant sprinkler system, the plan must ensure complete evacuation will be accomplished within 13 minutes;

(iii) if the entity has a central fire alarm system and an automatic suppressant sprinkler system, the plan must ensure evacuation will be accomplished as necessary under the circumstances;

(iv) if the entity has a central fire alarm system, and has a safe location that is remote or separated from the effects of any fire and to which the adults may be safely evacuated, the plan must ensure evacuation will be accomplished as required by the state or municipal fire safety authority responsible for inspecting the entity;

(2) describes in detail the procedures that will be followed for the complete evacuation of the entity, including specific procedures, as applicable, for

(A) children under 30 months of age;

(B) adults or children with limited mobility; and

(C) adults or children who otherwise may need assistance in an emergency, including an adult or child who is mentally, visually, or hearing impaired;

(3) includes procedures for other emergency situations or natural disasters that may affect the entity, including, as appropriate, tsunami, flooding, and earthquake emergencies;

(4) provides for drills to be conducted as required by (f) of this section;

(5) requires

(A) training of all employees in implementing the plan; and

(B) participation of all employees who are on duty during the scheduled drill; and

(6) for an assisted living home, provides that the procedures developed in the plan will be reviewed with each adult in care or that adult's representative before the adult begins to receive care.

(f) An entity shall conduct emergency evacuation drills as required in this subsection. Subject to (g)(6) and (7) of this section, a drill may be postponed or modified during severe weather. The entity shall conduct a drill at least

(1) once each month if the entity is

(A) licensed to provide care for children younger than age 12;

(B) a residential child care facility; or

(C) a maternity home; or

(2) once every three months if the entity is

(A) a foster home where children in care are age 12 or older and have been in care at the entity for at least three months; or

(B) an assisted living home, for each shift at the assisted living home; complete evacuation of the home must occur at least once each year for each shift unless the entity conducts evacuations as described under (e)(1)(B)(iii) or (iv) of this section and has an emergency evacuation plan approved by the state fire marshal or a municipality to which the fire marshal has deferred building fire safety inspection and enforcement activities.

(g) An entity shall make and retain a record of each required evacuation drill and make the record available to the department upon request. The record must include

(1) the date and time of the drill;

(2) the name of each employee on duty at the time of the drill;

(3) the name of each adult or child in care who was present at the time of the drill but did not participate in the drill, and the reason for nonparticipation;

(4) the amount of time required to complete the drill;

(5) a critique of the drill as described in (h) of this section; the requirement for including a critique does not apply to a foster home or foster group home, but the home shall include a brief evaluation of the evacuation;

(6) documentation of the reason for any postponement under (f) of this section, and the rescheduled date to conduct the postponed drill; and

(7) documentation of the reason for any modification under (f) of this section, and a description of the nature of the modification.

(h) The critique required by (g)(5) of this section must include

(1) a review of actions taken by each employee;

(2) a review of responses by adults or children in care during drill;

(3) an evaluation of whether existing policies were followed and, if not, an explanation of why a policy was not followed;

(4) an evaluation of whether the policies followed were effective and, if not, a description of how any policy will be revised for future drills;

(5) for any critique that indicates a drill was ineffective in any way, an identification of factors contributing to an ineffective drill; and

(6) any suggestions for improving future drills.

(i) If an emergency affects an entity, the entity shall notify the department by telephone, facsimile, or electronic mail no later than the following working day and shall, within five working days, submit a detailed written report to the department that includes the following:

(1) the date and time of the emergency;

(2) a description of the nature of the emergency;

(3) a description of how the evacuation was achieved, including the amount of time necessary to achieve evacuation;

(4) a critique of the evacuation that includes the information required under (h) of this section; except as provided in 7 AAC 10.1000(c), the requirement for including a critique does not apply to a foster home or foster group home, but the home shall include a brief evaluation of the evacuation;

(5) if the entity is a residential facility, and if the emergency rendered any part of the facility unsafe for occupancy, a description of how the entity will protect residents until the facility is safe for occupancy.

(j) In addition to the first aid kit required under 7 AAC 10.1075, an entity shall maintain one disaster kit that includes

(1) at least one flashlight and batteries;

(2) at least one battery-operated radio and batteries;

(3) potable water;

(4) nonperishable food; and

(5) blankets.

(k) An entity that uses oil, wood, natural gas, or propane as a heating or cooking fuel shall ensure that an operating carbon monoxide detector is installed within each sleeping area, or no more than three feet from the entrance to that area, and is regularly inspected, tested, and serviced. In addition, if the entity is in a multi-level facility, at least one operating carbon monoxide detector must be installed on each level.

(l) An entity licensed to provide care for five or fewer adults or children shall ensure that

(1) the building occupied by the adults or children in care has at least two means of emergency escape that are remote from each other and that provide unobstructed access to the outside of the building; at least one means of emergency escape must be an exterior door; if one of the means of emergency escape is a window, the window must comply with the requirements of (3) of this subsection; an entity that is located in a single-family dwelling with only one exterior door may not provide care for more than five children, including children who are relatives of the administrator or foster parent unless the department approves an additional means of egress;

(2) the building occupied by the adults or children in care has at least one means of escape from any basement directly to the outside at or near ground level, if adults or children in care occupy the basement for any part of the day;

(3) unless prohibited by the state fire marshal for a window 20 feet or more above ground level, each bedroom has at least one fully-opening window that provides escape directly to the outside and that meets the following requirements:

(A) the finished sill height may not exceed

(i) 44 inches above the floor; the department will allow an entity to meet this requirement through the provision of a permanently installed step, the top of which is no more than 44 inches from the sill, if the step does not create a tripping hazard, block wheelchair access in the bedroom, or block a heating element; any request for a variance of the sill height requirement must be accompanied by written approval from the state fire marshal; or

(ii) 48 inches above the floor for a foster home or foster group home licensed under 7 AAC 50 on or before June 23, 2006, or an assisted living home licensed under 7 AAC 75 on or before June 23, 2006, if the home does not already meet the standard in (i) of this subparagraph; the home must meet the standard in (i) of this subparagraph if the bedroom is remodeled or a new bedroom is constructed;

(B) the net clear openable area must be a minimum of 5.7 square feet; for purposes of this subparagraph,

- (i) the net clear openable height may not be less than 24 inches; if the height is 24 inches, the width may not be less than 34.25 inches; and
- (ii) the net clear openable width may not be less than 20 inches; if the width is 20 inches, the height may not be less than 41.25 inches;
- (4) a window screen is not used if it permanently prevents exit or if it cannot be easily removed for exit;
- (5) the entity is free of any accumulation of combustible waste material and other fire hazards in or around the premises;
- (6) at least one AC primary powered smoke detection device with battery backup, or at least one monitored battery powered smoke detection device, is located in each bedroom; in addition, if the entity is in a multi-level facility, at least one smoke detection device must be installed on each level; each device required under this paragraph must be less than 10 years old, or newer if necessary to comply with the manufacturer's recommended replacement date; in this paragraph, "AC" means alternating current;
- (7) at least one fully charged 2A:10BC dry chemical fire extinguisher is strategically located on each level of the facility, and is installed, inspected, tested, and serviced according to the requirements of 13 AAC 50.025(47) ;
- (8) any flammable or combustible liquid is stored in a container with a tight-fitting lid specifically designed for holding flammable or combustible liquids, and ensure that these liquids are kept out of the reach of children, or adults with impaired judgment; and
- (9) each heating device meets the applicable requirements of 7 AAC 10.1015.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.020
AS 47.32.030	AS 47.32.050	AS 47.32.060
AS 47.33.005	AS 47.33.010	

7 AAC 10.1015. Heating and heating devices

(a) An entity shall ensure that room temperature in the facility is maintained at the following applicable draft-free temperature, adjusted as needed for the majority of adults or children in care to be comfortable:

- (1) 65 degrees Fahrenheit for an entity licensed to provide care for children;
- (2) 68 degrees Fahrenheit for an entity licensed to provide care for adults.

(b) The entity shall ensure that

- (1) each heating device is installed and maintained in a safe and serviceable manner and is

(A) vented to the outside if the device is fuel burning; vents or stacks leading from a heating unit must be air-tight at joints so that fumes, smoke, or unburned gases cannot pass from the device, vent, or stack into the entity;

(B) equipped with protective devices if presenting a hazard because of an exposed flame or heating element; heat sources must be shielded in a manner that prevents burn injury; the shield must be far enough from the heat source to prevent it from smoldering or burning; and

(C) not placed or located in sleeping quarters during sleeping hours, unless the entity does not have a separate sleeping area, or in exit ways or corridors at any time; and

(2) an open flame heater is not used, except for a fireplace that complies with 13 AAC 50, 13 AAC 55, and any applicable municipal building code; if a fireplace is used, it must have a protective screen or gate, and the area near the fireplace must be kept free of clutter and combustible or flammable material.

(c) The entity shall ensure that any portable electric heater is equipped with a tipover switch and is kept out of the reach of children, or adults with impaired judgment. A portable electric heater must be kept from flammable objects in accordance with the manufacturer's recommendations. The entity must develop and implement a policy that outlines the safe and proper use of portable heaters. Except as provided in 7 AAC 10.1000(c) , the requirement to develop a policy does not apply to a foster home or foster group home.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.020

AS 47.32.030

AS 47.33.005

AS 47.33.010

7 AAC 10.1020. Water supply

(a) An entity shall provide an ample supply of potable water from a system that complies with applicable provisions of 18 AAC 80.

(b) An entity listed in 7 AAC 10.1000(b) that was licensed before June 23, 2006, has until June 23, 2007 to comply with the requirements of this section, if the entity was approved by the licensing agency to use a rain catchment system as its source of potable water.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1022. Wastewater disposal

An entity shall provide a domestic wastewater system that complies with applicable provisions of 18 AAC 72.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1025. Solid waste disposal

An entity shall ensure that solid waste is conveyed, stored, and disposed of in a manner that

- (1) minimizes the development of odor;
- (2) prevents waste from attracting and harboring pests; and
- (3) complies with applicable provisions of 18 AAC 60.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1030. Toilet facilities, sinks, showers, and bathing facilities

(a) An entity shall ensure that plumbing in the entity is consistent with good public health practices. An entity located in a municipality with a population of 2,500 or more shall ensure that plumbing is sized, installed, and maintained as required by the applicable state plumbing code developed under AS 18.60.705 - 18.60.740, and by any applicable municipal plumbing code.

(b) Except as provided in 7 AAC 10.1000(c) , the requirements of this subsection do not apply to foster homes. An entity shall provide at least the number of toilets, handsinks, and bathtubs or showers set out in the following table:

Minimum Plumbing Fixtures

Based on Average Number of Adults or Children in Care, Plus Employees and Family Members in the Entity During Operation *

Type of Entity	Minimum Number of Toilets	Minimum Number of Handsinks	Minimum Number of Bathtubs or Showers
Child care center	One for 15 or fewer persons	One for 15 or fewer persons	For a center licensed to care for infants or toddlers, at least one bathtub, portable tub capable of being filled, dumped, and cleaned, or sink used only for the purpose of bathing
	Two for 16 to 30 persons	Two for 16 to 30 persons	
	One additional toilet for each additional 15 or fewer persons	One additional handsink for each additional 15 or fewer persons	
Residential child care facility, assisted living home, maternity home, or foster group home	One for every six persons	One for every six persons	One for every six persons

* This number is calculated based on the anticipated number of individuals who will be in the entity each day, using a six-month average. Infants are not included for purposes of calculating the number of persons in the entity.

(c) An entity shall provide and maintain clean and sanitary toilet facilities and ensure that in each toilet room

(1) at least one easily cleanable waste receptacle is provided; if soiled diapers are kept in a waste receptacle until disposed of, that waste receptacle must be covered;

(2) toilet tissue is provided from a wall-hung or protected container at each toilet;

(3) if one or more partitions are used between toilets, each partition is raised at least 12 inches from the floor and is smooth and easily cleanable;

(4) each step stool, if provided, has a nonslip tread made of a water-impervious, durable material;

(5) each floor and wall is covered with smooth, durable, nonabsorbent, easily cleanable material; except as provided in 7 AAC 10.1000(c), the requirements of this paragraph do not apply to a foster home or foster group home; and

(6) each toilet lid, seat, and handle and each handsink is kept clean and sanitary.

(d) The entity shall ensure that each portable tub, bedpan, and potty-chair, as applicable, is emptied into a toilet, and is cleaned and sanitized in a utility sink or another place approved by the department. The entity shall ensure that the utility sink or other area is used only for this purpose and is cleaned and sanitized after each use. Except as provided in 7 AAC 10.1000(c)

, the requirement of this subsection regarding segregated use of the utility sink does not apply to a foster home or foster group home.

(e) Except for a foster home or foster group home, or an assisted living home providing service for two or fewer residents, the entity shall ensure that each handsink is used only for its designated purpose and is equipped with soap and

(1) at least one accessible single-use towel dispenser or heated air hand-drying device; the entity shall ensure that towels are discarded after each use;

(2) cloth towels if each towel is laundered after each use; or

(3) individual cloth towels assigned to each adult or child in care if each towel is used only by that adult or child; the entity shall ensure that the towels are cleaned or laundered at least every seven days and before assignment to another adult or child in care.

(f) The entity shall ensure that a shower or other bathing facility is constructed with smooth, easily cleanable walls, and water-impervious, nonskid floors that slope uniformly to a drain. The entity shall ensure that the shower or other bathing facility is located in a room with mechanical or other adequate ventilation. Except as provided in 7 AAC 10.1000(c)

, the requirements of this subsection do not apply to foster homes or foster group homes.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1035. Premises

(a) An entity shall ensure that

(1) the premises and surrounding grounds are kept clean, sanitary, safe, and in good repair;

(2) the entity is free of hazards, including splintered surfaces, sharp edges, protruding corners, broken or hazardous toys, steep stairways, ice on walkways, and unsafe play areas;

(3) insects, rodents, and other pests are controlled and that the entity is kept free of conditions that are likely to attract or harbor pests; any pesticide use is subject to the notice and other applicable requirements of 7 AAC 10.1093; if the department determines that the entity is not adequately controlling pests, the department may require the administrator to hire a commercial pest control applicator certified under 18 AAC 90, or to take other appropriate action if a commercial pest control applicator is not available in the community;

(4) outdoor areas are well drained and free from deep depressions that may collect standing water; if necessary to ensure the safety of adults or children in care, the department will require that an outdoor recreation area be enclosed with landscaping, a fence, or another effective barrier that prevents or deters access to a busy roadway or other potential hazard; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to a foster home or foster group home;

(5) ventilation by natural or mechanical means is provided to keep air fresh and to prevent the accumulation of heat, steam, condensation, vapors, smoke, or fumes; openings to the outside must prevent the entrance of rodents, insects, and other pests; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to a foster home or foster group home;

(6) walls and ceilings have smooth, durable, nonabsorbent, easily cleanable surfaces, except that rough-textured and acoustical tile ceilings are permitted in bedrooms and living rooms; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to a foster home or foster group home;

(7) lead-based paint is not used, and any painted surface is free from flaking;

(8) stairways and steps have handrails and nonslip treads or covering; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to a foster home or foster group home;

(9) at any fixture that is accessible to adults or children, hot water temperature is no less than 100 degrees Fahrenheit, and no more than 120 degrees Fahrenheit;

(10) self-dispensing or metering faucets, if used, provide a flow of water for at least 10 seconds;

(11) an artificial light source is provided in each area of the entity; the light must be sufficient and appropriate for the activities performed in each area by employees, or by adults or children in care;

(12) cleaners, medicines, and other harmful substances are stored in a place that is inaccessible to children and to adults with impaired judgment; for an entity licensed to provide care for six or more adults or children, the entity must provide a closet, storeroom, or other area separate from the area where adults or children in care are present for the storage of janitorial equipment and cleaning supplies;

(13) furniture and equipment is durable, safe, easily cleanable, and is kept clean and in good repair; and

(14) at least two feet of floor space is provided between each crib, mat, or bed; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to a foster home or foster group home.

(b) An entity licensed to provide care for adults with dementia or a cognitive impairment, including adults with a history of wandering or attempting to run away, shall ensure that a method is in place to alert staff when someone exits the entity. To meet the requirements of this subsection, the entity shall install a 15-second delayed exit door with an alarm at each exit, use a wander alarm system, or use another method approved by the department. If the entity wishes to use a delayed exit door, the entity must obtain approval from the municipal fire marshal.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1040. General cleaning and sanitation standards

(a) Except as provided in (b) of this section, in addition to the other cleaning and sanitation requirements of 7 AAC 10.1000 - 7 AAC 10.1095, an entity shall ensure that

(1) each table or highchair used for food is in good repair, is easily cleanable, and is cleaned and sanitized after each use;

(2) uncarpeted floors, low shelves, walls, door knobs, and other surfaces often touched by adults or children in care are cleaned and sanitized at a frequency to keep the surfaces clean and sanitary; in each carpeted area, the entity shall ensure that the carpet is vacuumed and shampooed at a frequency to keep it clean;

(3) each interior waste receptacle is kept clean and emptied as often as necessary to prevent overflow;

(4) any surface contaminated by a body fluid, including saliva, blood, mucus, vomit, urine, feces, and an injury discharge, is immediately cleaned and disinfected using universal precautions in accordance with 7 AAC 10.1045, including the use of gloves and the caregiver hygiene requirements of 7 AAC 10.1050(e) ;

(5) cleaning that may present a hazard to adults or children is done only when a room is not occupied by adults or children in care; and

(6) all bedding is laundered

(A) at least once every seven days;

(B) before assignment to another adult or child in care; and

(C) whenever soiled.

(b) Except as provided in 7 AAC 10.1000(c) , the requirements of (a)(6) of this section do not apply to a foster home or foster group home.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1045. Universal precautions

An entity shall take precautions to reduce risk against the spread of a communicable, contagious, or infectious disease that could pose a significant threat to the health, safety, or welfare of adults or children in care. In addition to the applicable requirements of 7 AAC 10.1000 - 7 AAC 10.1095, precautions include

- (1) seeking and complying with current medical and sanitation advice on communicable, contagious, or infectious diseases;
- (2) adopting universal precautions, including the use of gloves, to handle potential exposure to blood, blood-contaminating body fluids, and injury discharges;
- (3) training staff, if any, in universal precautions and in the prevention of communicable, contagious, and infectious diseases;
- (4) ensuring that the caregiver hygiene requirements of 7 AAC 10.1050 are met;
- (5) encouraging children, or adults with impaired judgment, to wash their hands
 - (A) before food handling, preparation, serving, or table setting;
 - (B) before eating;
 - (C) after toileting;
 - (D) after handling pets or other animals; and
 - (E) when hands are contaminated with a body fluid, including after nose wiping; and
- (6) encouraging children to wash their hands before and after participation in moist play, including molding clay or painting.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1050. Caregiver hygiene

(a) A caregiver with a communicable disease, rash, or infection, or an acute respiratory infection, may not work in an entity in any capacity in which the caregiver likely could transmit that disease, rash, infection, or respiratory infection to an adult or child in care. The requirements of this subsection do not apply to a foster home or foster group home.

(b) Caregivers shall conform to good hygienic practices, including those described in 7 AAC 10.1045 and this section.

(c) A caregiver shall thoroughly wash the caregiver's hands with soap and warm running water and rinse with water

(1) before food handling, food preparation, food serving, eating, or setting a table;

(2) after toileting, diapering, or assisting with toileting or diapering;

(3) before and after assisting with toothbrushing;

(4) after handling animals, animal waste, or animal cages;

(5) before and after giving medication, except as provided in (d) of this section;

(6) before and after participation in moist play including molding clay, painting, and cooking; and

(7) whenever hands are contaminated with a body fluid, including after nose wiping.

(d) If the caregiver is administering medication to more than one adult or child and during the process touches the adult or child, or a surface that might be contaminated, the caregiver may use a bacteriocidal or viricidal hand rinse or hand dip between each administration instead of handwashing.

(e) If a caregiver uses gloves, the caregiver shall wash the caregiver's hands immediately after the gloves are removed even if the hands are not visibly contaminated. The use of gloves does not preclude or substitute for handwashing.

(f) If a caregiver provides toothbrushing assistance, the caregiver shall dispense the toothpaste from a shared container in a manner that will not contaminate the toothpaste container. The requirements of this subsection do not apply to a foster home or foster group home.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1055. Incontinence care

(a) Except as provided in (b) of this section, an entity that provides incontinence care shall develop, and ensure that each caregiver follows, written incontinence care procedures that minimize the spread of disease and the risk of contamination to hands and surfaces. In addition, the entity shall ensure that

- (1) sufficient quantities of incontinence pads are available and neatly stored;
- (2) the entity has an adequate supply of additional bedding and mattress pads;
- (3) an impervious bag is used for the disposal of soiled pads; and
- (4) nonlatex gloves and handwashing supplies are available to prevent contamination, and are used in accordance with the universal precautions described in 7 AAC 10.1045.

(b) An assisted living home serving five or fewer residents, a foster home, and a foster group home are not required to have written procedures, but must ensure that procedures used minimize the spread of disease and the risk of contamination, and otherwise meet the requirements of this section.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1060. Additional provisions for entities licensed to provide care for children

(a) In addition to other applicable requirements of 7 AAC 10.1000 - 7 AAC 10.1095, an entity licensed to provide care for infants and children shall

- (1) if infants or toddlers are in care, install and use safety gates to prevent access to stairs;
- (2) install outlet covers in all electrical outlets that are not in use and that are accessible to children under age five; and
- (3) use safe and sanitary equipment and supplies for diapering and toileting, including easy accessibility for the caregiver to wash the caregiver's hands after changing a diaper or assisting a child with toileting.

(b) An entity that provides care for more than one child who uses bottles and pacifiers shall label the bottles and pacifiers with each child's name.

(c) An entity that reuses bottles, bottle caps, and nipples shall, before reuse,

- (1) wash them in a dishwasher, using a long wash cycle with hot water, and a heated drying cycle; or
- (2) boil them in water for at least five minutes.

(d) An entity that provides diapering shall develop, and ensure that each caregiver follows, written diaper changing procedures that minimize the spread of disease and the risk of contamination to hands and surfaces. Except as provided in 7 AAC 10.1000(c) , a foster home or foster group home is not required to have written procedures, but must ensure that procedures used minimize the spread of disease and the risk of contamination.

(e) In addition to the requirements of (d) of this section, an entity other than a foster home or foster group home shall ensure that

(1) the diaper changing area

(A) is not located in a food preparation area and is not used for temporary placement or serving of food; and

(B) has one accessible handsink located in, or immediately adjacent to, that area;

(2) each surface used for changing diapers is smooth, durable, nonabsorbent, and easily cleanable;

(3) sufficient quantities of clean diapers are available and are neatly stored;

(4) nonlatex gloves and handwashing supplies are available to prevent contamination, and are used in accordance with universal precautions described in 7 AAC 10.1045;

(5) for soiled clothing or cloth diapers, solid waste contents are disposed of by dumping the contents into a toilet and placing the diapers, without rinsing, in

(A) an impervious bag to be given to the parent for laundering, if applicable; or

(B) an easily cleanable container with a firmly fitted cover; the container must be

(i) lined with plastic;

(ii) designed to prevent the caregiver from contaminating the exterior surface of the container or the caregiver when inserting a soiled diaper;

(iii) provided within the caregiver's reach of the diaper changing area; and

(iv) emptied, cleaned, and sanitized daily;

(6) each diaper changing surface is cleaned and sanitized after each use; if a single-use, disposable cover is placed on the diapering surface before diapering, the entity shall ensure that the cover is disposed of immediately after diapering; the use of a single-use, disposable cover does not preclude or substitute for cleaning and sanitizing the surface or area after each use even if the surface or area is not visibly contaminated;

(7) after a soiled disposable diaper is removed, it is folded inward and resealed before disposal into a container described in (5)(B) of this subsection;

(8) if single-use, disposable wipes are used during diapering, the disposable wipes are discarded after use; if a nondisposable cloth is used, that cloth must be placed immediately, without rinsing, in

(A) an impervious bag to be given to the parent for laundering, if applicable; or

(B) a container described in (5)(B) of this subsection;

(9) diaper changing supplies, including containers of cream and lotion, are kept clean and sanitary; and

(10) children do not handle diaper changing supplies.

(f) The entity shall ensure that individual cloth towels used for bathing, toothbrushes, and combs used by a child in care are stored separately to prevent contamination and are labeled with the child's name. If a storage rack is used, the rack must be cleaned and sanitized or replaced when visibly soiled and after contamination with blood or another body fluid. Except as provided in 7 AAC 10.1000(c), the requirements of this subsection do not apply to a foster home or foster group home.

(g) Except for toys brought by children for personal use, the entity shall ensure that

(1) toys used by children are kept clean and sanitary;

(2) if a toy has been mouthed or is otherwise contaminated, that toy is cleaned and sanitized before use by another child; except as provided in 7 AAC 10.1000(c), the requirements of this paragraph do not apply to a foster home or foster group home; and

(3) toys used by children age three or older are cleaned at least once every seven days or when soiled; except as provided in 7 AAC 10.1000(c), the requirements of this paragraph do not apply to a foster home or foster group home.

(h) If a water play table is used by children, the entity shall ensure that

(1) water in the table is maintained at 2 - 10 parts per million chlorine solution during use; the entity shall frequently use chemical test strips to ensure that proper chlorine concentration levels are maintained;

(2) each child using the table has hands washed before and after playing at the water play table;

(3) a child with open sores or wounds does not play at the table;

(4) water is discarded after each day of use; and

(5) the table is cleaned and sanitized after each day of use.

(i) Except as provided in (k) of this section, an entity that provides a play area for use by children in care shall ensure that the play area is free of hazards that can cause injury, including

(1) selecting and maintaining play equipment so that it

(A) is securely anchored, unless it is portable and self supporting;

(B) is free of entrapment, pinch, or crush points;

(C) is free of sharp points, corners, or edges; and

(D) provides clearance between the equipment and any objects that may cause injury;
and

(2) covering areas around and under play equipment that has a fall height of three feet or more with shock absorbing material such as pea gravel, sand, or sawdust; concrete or asphalt may not be used under play equipment; in this paragraph, "fall height" means the vertical distance between a play surface and the area around and under the play equipment.

(j) Subject to (k) of this section, an entity shall ensure that each crib, crib mattress, cot, mat, and playpen is cleaned and sanitized

(1) at least once every seven days;

(2) before assignment to another child in care; and

(3) whenever soiled.

(k) Except as provided in 7 AAC 10.1000(c) , the requirements of (i) and (j) of this section do not apply to a foster home or foster group home.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1065. Food service and preparation

(a) An entity for which a food service permit is required by the Department of Environmental Conservation shall meet the applicable requirements of 18 AAC 31. If that department has set minimum standards for an entity, the entity shall meet those minimum standards.

(b) Except for a foster home or foster group home, an entity providing care for children shall ensure that any meals or snacks brought from a child's home are labeled with the child's name and the date.

(c) An entity that is exempt under 18 AAC 31.012 or 18 AAC 31.014 from the requirements of 18 AAC 31 shall maintain sanitary facilities for the proper care, storage, refrigeration, and preparation of food. The entity shall ensure that

(1) for purposes of AS 17.20.020 , food served is not adulterated; and

(2) fruits and vegetables are thoroughly washed with potable water before use.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1070. Medications

(a) Subject to 12 AAC 44.965, or another applicable statute or regulation, an entity listed in 7 AAC 10.1000(b) shall meet each applicable requirement of this section unless the entity has an onsite pharmacist and consequently follows a more stringent procedure for that requirement, including a procedure required under 12 AAC 52, or by federal law, and the department has been informed in writing of the more stringent procedure and has approved its use for purposes of this section.

(b) If, as part of health-related services provided in an assisted living home, the home supervises the self-administration of medications, supervision must be performed in accordance with AS 47.33.020 .

(c) Except as provided in (d) and (g)(4) of this section, an entity subject to this section shall

(1) ensure that each stored medication, including each nonprescription medication, is in its original container and properly labeled with the name of the adult or child for whom it is intended, the name of the medication, the dosage, expiration date, and directions for administration; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to nonprescription medication used communally in a foster home or foster group home;

(2) store medications in a manner that prevents access by unauthorized persons;

(3) store controlled substances in a locked, permanently affixed storage container; for a controlled substance that requires refrigeration, the storage container must be locked; the entity shall establish written procedures for maintaining a record that accurately accounts for the receipt and each use of each controlled substance, and for periodically reconciling the record; except as provided in 7 AAC 10.1000(c) , the requirements of this paragraph do not apply to a foster home, foster group home, or a child care facility;

(4) store medications, including controlled substances, in accordance with the manufacturer's recommendations; and

(5) ensure that nonprescription medications and health products, including nonaspirin fever reducers, naturopathic remedies, vitamin and mineral supplements, diaper ointments and powders, sunscreen, and insect repellent, are used only at the dose, duration, or method of administration specified on the manufacturer's label.

(d) The provisions of (c) of this section do not apply to a medication that a resident of an assisted living home is allowed to keep in that resident's room.

(e) The following entities subject to this chapter may be delegated the task of administration of medicine under 12 AAC 44.965:

- (1) a foster home for an adult;
- (2) a foster group home for adults;
- (3) an assisted living home.

(f) An entity not listed in (e) of this section may administer medication if

- (1) within the scope of the person's own license;
- (2) under other legal authority; or
- (3) under the supervision of another licensed health care provider.

(g) An entity authorized to administer medication may do so only under the following conditions:

- (1) the entity must first obtain written permission for the administration of prescription medication from the adult or that adult's representative, or the parent of a child in care upon admission into the entity, or when a new medication is prescribed; if the department is the child's legal guardian, the entity must first obtain written permission from the department;
- (2) the entity may administer prescription medication and special medical procedures only in the dosage, at the intervals, or in the manner prescribed by a physician or other person legally authorized to prescribe medication or medical procedures;
- (3) if an entity providing care for children has not obtained written permission from the child's parent for the administration of a commonly used nonprescription medication or medication contained in the first aid kit required by 7 AAC 10.1075, the entity shall document telephone permission to administer that medication; a foster home, a foster group home, or an entity providing care for a child for whom the department is the legal guardian is not required to obtain permission from the child's parent for the administration of nonprescription medication, but shall administer nonprescription medication as authorized by the department in the placement agreement;
- (4) the entity shall have a written policy for the use of any commonly used nonprescription medication for oral or topical use kept on hand by the entity for the communal use of any adult or child in care for whom the medication may be indicated; the requirements of this paragraph do not apply to a foster home or foster group home, or to an assisted living home serving two or fewer residents;
- (5) prescription medicine must be kept in
 - (A) the original container showing the date filled, the expiration date, instructions, and the physician's or other medical professional's name; or

(B) medicine sets filled by a pharmacist, a licensed medical professional, or a resident's representative; the prescription date filled, the expiration date, instructions, and the physician's or other medical professional's name must be affixed to or stored with each medicine set;

(6) in an entity with one or more employees, only one designated employee in each shift may administer medication, the designated employee shall record and initial the time each dose is administered;

(7) unused medication must be returned to the parent of a child in care when the medication is no longer needed, except that a foster home, foster group home, or an entity providing care for a child for whom the department is the legal guardian shall discard the unused medication

(A) in a manner that prevents access by children in care; and

(B) in accordance with instructions from the manufacturer, if any;

(8) an assisted living home shall ensure that unused medication is properly discarded and shall notify the resident or resident's representative of the disposal of the medication.

(h) The entity shall ensure that medication requiring refrigeration is grouped together, stored in a manner to prevent contamination of food, and labeled as required by this section. A residential child care facility or an assisted living home that provides care for six or more residents shall keep medication in a separate refrigeration unit that is not used to store food.

(i) In addition to complying with the other requirements of this section, a residential psychiatric treatment center

(1) shall ensure that the record of the prescription and administration of prescription and nonprescription medications is kept in each child's files and in another master medications file arranged to show in chronological order the prescription and administration of medications to each child, with records sorted by each child's name, showing each diagnosis for each child;

(2) shall make the records described in (1) of this subsection available for department review for the purpose of identifying and preventing abuse, or inappropriate or unnecessary use of prescription or nonprescription medications;

(3) may not use a medication for the purpose of sedating or controlling the behavior of a child; however, subject to 7 AAC 50.870, a medication may be used for chemical restraint in a residential psychiatric treatment center; in this paragraph, "chemical restraint" has the meaning given in 7 AAC 50.990;

(4) may not administer a psychotropic or neuroleptic class medication to a child unless the use of the medication is part of the child's treatment plan developed under 7 AAC 50.840 and use of the medication has been consented to by the child's parent, Indian custodian, or guardian after both the clinical director and the prescribing physician have given sufficient information and counseling to the parent, Indian custodian, or guardian

to ensure that the parent, Indian custodian, or guardian can give an informed consent to or refusal of the use of the medication; the information and counseling must discuss the option of not using the medication, the potential benefits and disadvantages of the medication, and alternative medications or therapies that might reasonably be used to treat the same condition; and

(5) may not discharge or threaten to discharge a child because the child's parent, Indian custodian, or guardian declines to give consent to the use of any recommended medication.

(j) In this section,

(1) "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;

(2) "Indian custodian" has the meaning given in 25 U.S.C. 1903(6).

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

AS 47.33.020

7 AAC 10.1075. First aid kit and procedures

(a) An entity shall review, and shall post or make readily available, first aid procedures. The entity shall post and keep current emergency telephone numbers, including the number for the poison control center, near one or more telephones in the entity. The entity shall maintain

(1) at least one first aid kit described in (c) of this section that is kept at the entity;

(2) at least one additional first aid kit described in (c) of this section for field trips or outings away from the entity; and

(3) an abbreviated first aid kit for a neighborhood walk of 30 minutes or less; the requirements of this paragraph do not apply to an assisted living home; an entity may use the kit described in (2) of this subsection for a neighborhood walk if the kit is not needed for a field trip or outing, and if a kit described in (c) of this section is kept at the entity; for purposes of this paragraph, an abbreviated kit must contain, at a minimum, the following:

(A) disposable nonporous, nonlatex gloves;

(B) tweezers;

(C) adhesive bandages;

(D) bandage tape;

(E) sterile gauze pads;

(F) a cold pack;

(G) a CPR barrier device or mask;

(H) potable water;

(I) for an entity providing care for children, the emergency child record information required by 7 AAC 57.400(a) ;

(J) medication that may be needed on the walk.

(b) The entity shall restock each first aid kit after use to ensure compliance with this section.

(c) Except as provided in (a)(3) of this section, each first aid kit must include at least the following items, checked regularly to ensure that any expiration date is not exceeded, and kept within a container that will hold all of the items:

(1) disposable nonporous, nonlatex gloves;

(2) sealed packages of alcohol wipes or antiseptic for thermometer cleaning only;

(3) scissors;

(4) tweezers;

(5) a thermometer;

(6) adhesive bandages;

(7) bandage tape;

(8) sterile gauze pads;

(9) flexible roller gauze;

(10) triangular bandages;

(11) safety pins;

(12) an eye dressing;

(13) a note pad with a pen or pencil;

(14) activated charcoal, for use only under the direction of a poison control center or another medical professional;

(15) a cold pack;

(16) a current American Academy of Pediatrics or American Red Cross standard first aid text or equivalent first aid guide;

- (17) a CPR barrier device or mask;
 - (18) the telephone number for the poison control center;
 - (19) potable water;
 - (20) splints, including small child-size splints if children are in care;
 - (21) soap;
 - (22) a working flashlight;
 - (23) for a field trip or outing away from a child care facility, other than a foster home or foster group home, and for each child participating in the trip or outing,
- (A) the emergency child record information as required by 7 AAC 57.400(a) ; and
- (B) written permission for use of medication; only medication that is or may be needed during a field trip or outing may be included in first aid kit, and only for the length of the field trip or outing.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

Editor's note: Information about the first aid text or guide referred to in 7 AAC 10.1075 may be obtained from the American Academy of Pediatrics at its website: <http://www.aap.org/>, or by writing to the American Academy of Pediatrics, 141 Northwest Point Boulevard, Elk Grove Village, IL 60007-1098 (telephone 847-434-4000). Information may be obtained from the American Red Cross at its website: <http://www.redcross.org/>, or by writing to American Red Cross National Headquarters, 2025 E Street, NW, Washington, DC 20006 (telephone 202-303-4498).

7 AAC 10.1080. Firearms and ammunition

- (a) Firearms and ammunition are prohibited in an assisted living home licensed for six or more residents, and in a child care center, a residential child care facility, and a maternity home.
- (b) An entity that is not subject to (a) of this section shall ensure that any firearms are unloaded and stored in a locked gun safe or other locked place that is not visible or accessible to adults or children in care. The entity shall ensure that ammunition is stored separately from the firearms in a place inaccessible to adults or children in care.
- (c) The entity shall inform each adult in care or that adult's representative, parents of children in care, or social workers, care coordinators, or case managers, as applicable, if firearms are present in the entity.

(d) Before a foster home allows a child to handle a firearm, the home shall submit a firearms safety plan acceptable to the department that addresses the firearms safety instruction approach the home will use.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1085. Smoking

(a) In addition to the applicable requirements of AS 18.35.300 - 18.35.365, an entity listed in 7 AAC 10.1000(b) is subject to the applicable requirements of this section.

(b) Smoking is prohibited in a child care center, a residential child care facility, and a maternity home.

(c) Smoking in a foster home or foster group home must be limited to outside the home, or in a well-ventilated area away from the immediate living area, and only after submitting a plan acceptable to the department that addresses how children in care will be protected from smoke.

(d) Smoking is prohibited in a child care home and a child care group home while children are in care. The home must ensure that, while children are in care,

(1) cigarettes or other smoking products, and ashtrays, lighters, or other smoking accessories are not visible or accessible to children; and

(2) the home does not smell of smoke from cigarettes or other smoking products.

(e) Any vehicle used to transport children must be smoke-free.

(f) If smoking is allowed in an assisted living home, a designated smoking and a nonsmoking area must be provided. A designated smoking area may not be in a common area. The designated smoking area must be separated from common areas by a closed door or partition that protects nonsmokers from smoke. The designated smoking area must be provided with natural or mechanical ventilation sufficient to provide fresh air and to prevent the accumulation of smoke and smoke odor.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.130	AS 47.32.140	AS 47.33.005
AS 47.33.010		

7 AAC 10.1090. Animals

(a) An entity shall ensure that any animal kept in the entity has no communicable disease, has immunizations required under state and federal law, and is free of internal

and external parasites. The entity must show proof of compliance with required immunizations to the department upon request.

(b) The entity shall inform each adult in care or that adult's representative, parents of children in care, social workers, care coordinators, and case managers, as applicable, if any animal is present in the entity.

(c) Psittacine birds may not be kept in a child care center.

(d) A psittacine bird may be kept in an assisted living home if the bird

(1) receives prophylactic antibiotics before introduction into the assisted living home; and

(2) is isolated at least 45 days in a room separate from a room occupied by any other birds in the home.

(e) Except for a child care center subject to (c) of this section, a parakeet, pigeon, or other similarly small-sized psittacine bird may be kept in another entity listed in 7 AAC 10.1000(b) only if the bird

(1) receives prophylactic antibiotics before introduction into the entity; and

(2) is isolated at least 45 days in a room separate from a room occupied by any other birds in the entity.

(f) Ducklings and chicks may be incubated or hatched in an entity, except in a room where infants or toddlers are present, if

(1) children do not handle the ducklings or chicks; and

(2) the ducklings and chicks are removed from the entity when hatched.

(g) Amphibians, ferrets, reptiles, and wild, poisonous, or predatory animals may not be kept in an entity listed in 7 AAC 10.1000(b). A foster home or foster group home, or an assisted living home serving two or fewer residents, may have amphibians, ferrets, or reptiles, if approved by the department. The prohibition of this subsection on predatory animals does not apply to domestic dogs and domestic cats.

(h) The entity shall ensure that

(1) any birds, fish, and other animals allowed by this section are kept in appropriately designed cages or aquariums; the requirements of this paragraph do not apply to domestic dogs and domestic cats;

(2) the area around a cage or aquarium is smooth, nonabsorbent, impervious to water, and easily cleanable, and is cleaned and sanitized at a frequency to keep the area clean and sanitary;

(3) animal waste is removed daily, or at a frequency to prevent odor or contact with adults or children in care;

(4) each cage is lined with an impervious material and is cleaned at a frequency necessary to prevent a health risk to adults or children in care;

(5) bowls used for providing food and water for animals are cleaned at a frequency necessary to prevent a health risk to adults or children in care; and

(6) cleaning of animal waste

(A) is conducted when adults or children in care are not present; except as provided in 7 AAC 10.1000(c) , the requirements of this subparagraph do not apply to a foster home or foster group home; and

(B) is not conducted in an area used for food preparation or service.

(i) The entity shall

(1) disclose to the department information regarding any animal in the entity, if that animal has

(A) been the subject of a past contact with an animal control official because of aggressive behavior or biting; or

(B) a history of aggressive behavior or biting, regardless of whether the animal has been the subject of a past contact with an animal control official;

(2) notify the department within 24 hours of any occurrence of aggressive behavior or biting by an animal in the entity, including whether the occurrence resulted in a contact with an animal control official;

(3) immediately remove from contact with adults or children in care, an animal described in (1) or (2) of this subsection; and

(4) permanently remove from the entity an animal described in (1) or (2) of this subsection, if the department determines that the animal is a threat to the life or safety of adults or children in care.

(j) In this section, "psittacine bird" means a bird classified as part of the family Psittaciadae, including parrots, macaws, and parakeets.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

7 AAC 10.1093. Pesticide use and notification

(a) An entity shall, whenever practical, use a nonchemical method, including good sanitation practices, structural repair, and window screens to control pests. Pesticide use, including the use of a certified applicator if required, is subject to applicable requirements of the Department of Environmental Conservation under 18 AAC 90. The

requirements of (b) - (g) of this section do not apply to a foster home or foster group home, but the home must notify the department before any major fumigation or other application that would require residents of the home to be temporarily relocated.

(b) Except as provided in (e) and (f) of this section, at least 24 hours before the application of a pesticide to any area of an entity used by or accessible to adults or children in care, an entity that provides care for six or more adults or children shall notify each adult or that adult's representative, each parent of a child in care, social workers, care coordinators, and case managers, as applicable, regarding the application. A notice under this subsection must include

(1) a description of the area where the pesticide will be applied;

(2) the date and approximate time of application; if the application will be outdoors, the notification must include three dates in chronological order in case an application is cancelled due to weather;

(3) the common or brand name of each pesticide to be used;

(4) the targeted pests to be controlled by the pesticide;

(5) a contact name and telephone number at the entity; and

(6) a statement that, upon request, the entity will provide

(A) a list of each active ingredient in the pesticide;

(B) the EPA registration number; and

(C) the telephone contact number, if any, on the label of the pesticide for additional information about each pesticide.

(c) The notification required by (b) of this section may be made by individual notice delivered by telephone, face-to-face oral communication, electronic mail, postal mail, or facsimile. The entity may develop a registration system to provide this notification only to those persons who wish to receive notification. If the entity develops a registration system, the entity shall provide written notice at the time of admission or enrollment that pesticides may be used in or around the entity and explain how to register to be notified at least 24 hours before a pesticide treatment. If written notice is given, the notice may not be included with a notice being provided on another matter.

(d) Except as provided in (f) of this section, immediately before application of a pesticide, the entity shall post the area where the pesticide is to be applied with a sign that is at least 8 1/2 x 11 inches and that reads "Pesticide Treated Area: KEEP OUT" in block letters at least one inch high. The entity shall ensure that the sign remains posted and that children, or adults with impaired judgment, are kept out of the treated area for at least 24 hours or until the reentry interval, if any, on the pesticide label has expired, whichever period is longer.

(e) An entity may authorize an immediate pesticide treatment without prior notification if the administrator determines that an emergency exists. An emergency includes an

immediate and unanticipated threat to the health or safety of adults or children in care. The provisions of (d) of this section must be met.

(f) The following pesticide applications are not subject to the notification or posting requirements of (b) - (e) of this section:

(1) the application of an antimicrobial pesticide;

(2) an application during which the entity remains unoccupied by adults or children in care for a continuous 72-hour period after the application;

(3) the application of a rodenticide in a tamper-resistant bait station, or in an area inaccessible to children or to adults with impaired judgment;

(4) the application of silica gels and other ready-to-use pastes, foams, or gels that will be applied in an area inaccessible to children or to adults with impaired judgment.

(g) An entity shall keep records of pesticide applications for at least two years after application. Records required to be kept under this subsection must be made available for department review and must include

(1) a copy of each notice issued under this section, if a child care center authorizes a pesticide application under (f) of this section, the information required under (b) of this section must be included in the record;

(2) the date of the application;

(3) the name and employer of the individual who applied the pesticide, including the individual's certification number;

(4) the rate of the application;

(5) the concentration of the pesticide applied; and

(6) the total amount of pesticide product used.

(h) In this section,

(1) "active ingredient" has the meaning given in 18 AAC 90.990; the definition of "active ingredient" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;

(2) "antimicrobial pesticide" has the meaning given in 18 AAC 90.990; the definition of "antimicrobial pesticide" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;

(3) "label" has the meaning given in 18 AAC 90.990; the definition of "label" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;

(4) "rate of application" has the meaning given in 18 AAC 90.990; the definition of "rate of application" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;

(5) "rodenticide" has the meaning given in 18 AAC 90.990; the definition of "rodenticide" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

Editor's note: The sign required in 7 AAC 10.1093 may be downloaded from the department's website at <http://www.hss.state.ak.us/dph/CL/forms/folhome.htm> and is available at the Department of Health and Social Services' offices statewide.

7 AAC 10.1095. Toxic substances; poisonous plants

(a) An entity shall ensure that

(1) each cleaning material, detergent, aerosol can, pesticide, poison, and other toxic material is

(A) stored in the original labeled container; the requirement in this subparagraph does not apply to a spray bottle that contains a commercial sanitizing solution or a bleach-water solution used to sanitize toys, tables, counters, and other surfaces throughout the day, if that bottle is appropriately labeled and is stored as provided in (B) of this paragraph;

(B) inaccessible to children or to adults with impaired judgment, and stored separately from medication and food;

(C) used

(i) according to the manufacturer's instructions;

(ii) for the intended purpose;

(iii) in a manner that will not contaminate a play surface, a food service area, or a food preparation area; and

(iv) in a manner that is not a hazard to adults or children in care;

(2) only nontoxic arts and crafts materials are used; and

(3) a poisonous plant is not in an entity where children, or adults with impaired judgment, are in care, except as provided in (b) of this section.

(b) The department may allow a poisonous plant that is a common household plant, including a poinsettia, a dieffenbachia, an English ivy, a mother-in-law, and a philodendron, to be present in an entity described in (a)(3) of this section, if the department finds that children in care or adults with impaired judgment will be protected from harm. The entity shall submit to the department a written list of all poisonous plants maintained in the entity, and a description of how the entity will protect children, or adults with impaired judgment, from being harmed by the plants. If the department allows one or more poisonous plants to be present in the entity, the entity shall inform each adult's representative, parents of children in care, social workers, care coordinators, and case managers, as applicable, of any poisonous plant present in the entity, and describe how the entity will protect children, or adults with impaired judgment, from harm.

(c) In this section, "poisonous plant"

(1) means a plant, tree, or shrub that can cause injury or death, if a portion of that plant, tree, or shrub is ingested or touched; and

(2) includes certain

(A) flower garden plants, including autumn crocus, bleeding heart, chrysanthemum, daffodil, four-o'clocks, foxglove, hyacinth, hydrangea, iris, jonquil, lily of the valley, morning glory, narcissus, and snow on the mountain;

(B) house plants, including bird of paradise, castor bean, dumbcane (also known as dieffenbachia), English ivy, holly, jequirty bean (also known as rosary pea), Jerusalem cherry, mistletoe, mother-in-law, oleander, philodendron, poinsettia, and rhododendron;

(C) trees and shrubs, including black locust, boxwood, chokecherry, elderberry, English yew, horse chestnut, buckeye, juniper, oak, water hemlock, and yew;

(D) vegetable garden plants, including asparagus, sprouts and green parts of potato, rhubarb leaves, and green parts of tomato; and

(E) wild plants, including belladonna, bittersweet, buttercups, Indian hemp, jack-in-the-pulpit, jimson weed, larkspur, monkshood, certain mushrooms, nightshade, poison hemlock, poison ivy, poison oak, poison sumac, tobacco, and skunk cabbage.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

AS 47.33.005

AS 47.33.010

Article 5

General Variance Procedures

Section

9500. Purpose and applicability.

9505. General variance.

9510. Request for a general variance.

- 9515. Notice requirements for general variance requests for assisted living homes.
- 9520. Evaluation of a request for a general variance.
- 9525. Grant or denial of a general variance.
- 9530. Posting of a general variance.
- 9535. Request for reconsideration of denial or revocation of a general variance.

7 AAC 10.9500. Purpose and applicability

(a) Except as provided in (b)(2) and (3) of this section, the purpose of 7 AAC 10.9500 - 7 AAC 10.9535 is to provide a process for determining whether a general variance, if requested, should be granted for a requirement of

- (1) AS 47.32;
- (2) this chapter; or
- (3) another regulation applicable to an entity referred to in 7 AAC 10.015.

(b) The provisions of 7 AAC 10.9500 - 7 AAC 10.9535

- (1) apply to the entities referred to in 7 AAC 10.015;
- (2) do not apply to a temporary variance to admit a child for care in an assisted living home under 7 AAC 75.415; and
- (3) do not apply to a request for a variance from a provision of 7 AAC 10.900 - 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry), 7 AAC 41.205 (Child Protection and Criminal History Check Requirements), or 7 AAC 57.315 (Child Protection and Criminal History Check Requirements).

History: Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.020
AS 47.32.030	AS 47.32.130	AS 47.32.140

7 AAC 10.9505. General variance

(a) Subject to 7 AAC 10.9500(b) (2) and (3), and (b) of this section, the department may grant a general variance if

- (1) the applicable requirements of 7 AAC 10.9500 - 7 AAC 10.9515 are met;
- (2) an alternative means, acceptable to the department, satisfies the purpose of the requirement for which the variance is sought; and
- (3) the health, safety, and welfare of recipients of services are protected.

(b) The department may grant an assisted living home a general variance from a requirement of AS 47.32, 7 AAC 75, or this chapter to allow the home to

- (1) meet the goals of AS 47.32, 7 AAC 75, and this chapter in a way that differs from the methods set out in AS 47.32, 7 AAC 75, or this chapter;
- (2) promote aging in place to minimize the need for a resident to move from the home; or
- (3) integrate mentally, developmentally, and physically disabled residents into the community to reach their highest level of functioning.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

7 AAC 10.9510. Request for a general variance

An entity seeking a general variance under 7 AAC 10.9500 - 7 AAC 10.9535 must submit to the department, on a form supplied by the department, a request for a general variance as required by this section. A request must contain the following:

- (1) the requirement from which the variance is sought;
- (2) the reasons why the entity is unable to comply with the requirement, a description of how the entity is not in compliance, and the extent to which compliance with the requirement will impose any substantial economic, technological, programmatic, legal, or medical hardship on the entity or recipients of services;
- (3) the period of time for which the variance is requested;
- (4) the proposed alternative means of satisfying the purpose of the requirement for which the variance is sought;
- (5) a statement as to how the health, safety, and welfare of recipients of services will be protected during the period of the variance;
- (6) the plan for achieving compliance before the variance expires;
- (7) assurance that the conditions at the entity do not present an imminent danger to the health, safety, or welfare of recipients of services;
- (8) if the request for a variance involves fire safety or another state or municipal requirement, evidence that the request has been reviewed by the appropriate authority;
- (9) for a licensed entity, the names of the recipients of services who would be affected by the variance, and the names and addresses of any representatives of those recipients of services; the requirements of this paragraph do not apply to a child care facility subject to 7 AAC 57 unless this information is requested by the department;
- (10) for an assisted living home, assurance that the notice requirements of 7 AAC 10.9515 will be met;

(11) any additional information requested by the department to determine the effect of a variance on the health, safety, and welfare of recipients of services.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

Editor's note: The request form referred to in 7 AAC 10.9510 may be obtained from the Certification and Licensing section of the Division of Public Health, 619 East Ship Creek Avenue, Suite 232, Anchorage, Alaska 99501.

7 AAC 10.9515. Notice requirements for general variance requests for assisted living homes

(a) If an assisted living home is requesting a general variance for a state statutory or regulatory licensing requirement, the home shall deliver to each affected resident or the resident's representative, no later than five days after submitting a request for a variance, a

(1) copy or summary of the request; and

(2) notice that states

(A) that the resident or representative has the right to submit comments to the department regarding the request; and

(B) the date by which any comments must be received by the department.

(b) The home shall provide to the department a statement indicating compliance with (a) of this section.

(c) The department will consider any timely comments received under this section in determining whether to grant a general variance.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

7 AAC 10.9520. Evaluation of a request for a general variance

The department will evaluate a request for a general variance by

(1) investigating the statements in the request form;

(2) inspecting the entity, if appropriate; and

(3) taking one or both of the following actions:

(A) conferring with the applicant or licensee regarding the request;

(B) discussing the request with the affected recipients of services or their representatives, as appropriate, to determine whether they support granting the variance.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

7 AAC 10.9525. Grant or denial of a general variance

(a) The department's decision to grant or deny a request for a general variance will be issued in writing and will be delivered to the person who made the request.

(b) Subject to (c) of this section, the department may grant a general variance, for a period that does not exceed one year, if the department determines that the entity

(1) is unable to comply with the requirement from which the variance is sought;

(2) has an effective plan for achieving compliance during the term of the variance; and

(3) is able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance.

(c) The department may grant a general variance for a longer period than allowed under (b) of this section if the department determines

(1) that

(A) strict compliance with the requirement from which the variance is sought cannot be accomplished without a substantial economic, technological, programmatic, legal, or medical hardship; or

(B) the variance will maintain or improve the quality of services for recipients of services; and

(2) that the entity has an effective plan for meeting the goal of the requirement from which the variance is sought, and that the plan adequately protects the health, safety, and welfare of recipients of services and otherwise meets all applicable statutory or regulatory standards.

(d) A decision to grant a request for a general variance will identify the statutory or regulatory requirement involved by section number and subject matter and state the duration, terms, and conditions of the variance, including the steps the entity must take to achieve compliance before the variance expires.

(e) A decision to deny a request for a general variance will be in writing and will state the reasons for the denial. The entity may reapply for a variance, addressing the

department's stated reasons for the denial or may request reconsideration under 7 AAC 10.9535.

(f) If an entity violates a condition of a general variance granted under this section, the department will send written notice to the entity that the variance is revoked. The notice will advise that the entity may request reconsideration under 7 AAC 10.9535.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

7 AAC 10.9530. Posting of a general variance

(a) If the department grants a request for a general variance, the entity shall post a copy of the general variance decision in a conspicuous place, with the entity's license as required by AS 47.32.080 , during the period the variance is in effect, and shall make it available to any person who wishes to review it. A general variance remains in effect for the duration stated, unless the department revokes the variance under (b) of this section.

(b) The department will revoke a general variance if the department finds that the entity is not following its plan for achieving compliance, or is no longer able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance. If the department decides to revoke a variance, it will provide written notice of revocation to the entity, setting out the reasons for the department's decision. The department will advise the entity of its right to request reconsideration under 7 AAC 10.9535. A notice of revocation issued under this subsection is effective 30 days after it is received by the entity unless a request for reconsideration is submitted. Nothing in this subsection precludes the department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of recipients of services is threatened.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.080

AS 47.32.130

AS 47.32.140

7 AAC 10.9535. Request for reconsideration of denial or revocation of a general variance

(a) If the department denies or revokes a variance subject to 7 AAC 10.9500 - 7 AAC 10.9535, the entity may submit a written request to the department for reconsideration of that decision.

(b) A request under (a) of this section must be submitted within 30 days after the entity receives the denial or notice of revocation, and must include

(1) the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a summary of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and proposed alternatives; and

(C) copies of any documents or data that would assist the department in its review.

(c) After reviewing a request for reconsideration, the department will notify the entity in writing within 30 days after receiving the request, and will state the reasons for the department's final decision.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.130

AS 47.32.140

Article 6

Inspections and Investigations

Section

9600. Inspections and investigations.

9610. Plan of correction.

9615. Allegation of compliance.

9620. Hearings.

7 AAC 10.9600. Inspections and investigations

The department will conduct announced and unannounced inspections and investigations of an entity or individual service provider that is subject to AS 47.05.300 - 47.05.390, AS 47.32, or this chapter

(1) for purposes of AS 47.05.300 - 47.05.390 and AS 47.32.110 ;

(2) to determine compliance with AS 47.05.300 - 47.05.390, AS 47.32, this chapter, and any other applicable statute or regulation; and

(3) to determine whether an enforcement action should be taken under AS 47.05.300 - 47.05.390, AS 47.32.130 , or 47.32.140.

History: Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.05.300	AS 47.05.310	AS 47.05.340
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.050	AS 47.32.060	AS 47.32.100
AS 47.32.110	AS 47.32.130	AS 47.32.140
AS 47.33.005	AS 47.33.010	

7 AAC 10.9610. Plan of correction

(a) The plan of correction required under AS 47.32.140 (b) must contain the following information for each violation identified in the report issued under AS 47.32.120 (a):

- (1) each action that will be taken to correct the violation;
- (2) each measure that will be taken or change that will be made to ensure the violation does not recur;
- (3) how the entity will monitor each corrective action to ensure the violation is cured and will not recur;
- (4) the date on or before which the violation will be cured.

(b) The plan of correction must be signed by the administrator or another person responsible for operation of the entity.

(c) If the department determines that any recipients of services were affected by a violation, the department may also require the entity to describe

- (1) each corrective action that will be taken with regard to those recipients; and
- (2) how the entity will identify other recipients of services who might be affected by the violation, and what corrective action will be taken.

(d) The entity may request that the plan of correction also act as the allegation of compliance required under 7 AAC 10.9615 if each violation listed in the report has been corrected before submission of the plan of correction.

(e) The department will review a plan of correction submitted under (a) - (d) of this section to determine whether the plan is acceptable. If the department determines that the plan is unacceptable, the department may

- (1) request additional information regarding one or more corrective actions described in the plan;
- (2) require the entity to amend the plan as directed by the department;
- (3) require the entity to comply with a plan of correction developed by the department under (g) of this section.

(f) If the department finds that an entity has failed to correct a violation of an applicable statute or regulation within the time specified by the department under AS 47.32.140 (a),

has failed to submit a plan of correction for department approval under AS 47.32.140 (b), or has submitted an unacceptable plan, the department may require the entity to participate in a plan of correction developed by the department under (g) of this section.

(g) In a plan of correction developed by the department, the department will describe each violation, specify each corrective action the entity must take to correct the violation, and specify the date on or before which the entity must cure the violation. The department will notify the entity in writing of a decision to require compliance with a plan of correction developed under this subsection, and will provide a copy of the plan of correction with the notice. In the notice, the department will describe any enforcement action under AS 47.32.140 (d) and (f) that the department intends to take, regardless of whether the violation is cured.

(h) The department may conduct a follow-up inspection to determine compliance with the plan of correction.

(i) The entity shall keep on the premises a copy of each inspection document described in AS 47.32.180 (b) for at least three years from the date of inspection and shall make each document available to any interested person upon request.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.050	AS 47.32.060	AS 47.32.100
AS 47.32.110	AS 47.32.120	AS 47.32.130
AS 47.32.140	AS 47.33.005	AS 47.33.010

7 AAC 10.9615. Allegation of compliance

An allegation of compliance required under AS 47.32.140 (c) must describe each action that was taken by the entity to correct each violation, and must include the date the violation was corrected. The allegation must be signed by the administrator or another person responsible for operation of the entity. The department will review the allegation to determine whether it provides enough detail to establish that each violation was corrected by any applicable deadline. The department may also conduct a follow-up inspection to validate the allegation of compliance.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010	AS 18.05.040	AS 44.29.020
AS 47.14.120	AS 47.32.010	AS 47.32.030
AS 47.32.050	AS 47.32.060	AS 47.32.100
AS 47.32.110	AS 47.32.140	AS 47.32.180
AS 47.33.005	AS 47.33.010	

7 AAC 10.9620. Hearings

An enforcement action taken by the department under AS 47.32 or this chapter, or another state statute or regulation applicable to an entity subject to AS 47.32 and this chapter, is subject to the applicable hearing requirements of AS 47.32.150 .

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.32.050

AS 47.32.130

AS 47.32.140

AS 47.32.150

AS 47.33.005

AS 47.33.010

Article 7

General Provisions

Section

9990. Definitions.

7 AAC 10.9990. Definitions

In this chapter, unless the context indicates otherwise,

- (1) "adequate" or "adequately" means that which is necessary to accomplish the intended purpose in keeping with good public health practices;
- (2) "administrator" means a person who controls, operates, manages, supervises, or conducts activities described in this chapter, or the person performing the duties of the owner, operator, manager, or supervisor;
- (3) "adult" means an individual 18 years of age or older;
- (4) "adult with impaired judgment" means an adult in care who has dementia or a cognitive impairment;
- (5) "approved" means acceptable to the department, based upon conformance with applicable federal, state, or municipal standards and good public health practices;
- (6) "assisted living home" has the meaning given in AS 47.32.900 ;
- (7) "caregiver" means an individual identified as a caregiver in 7 AAC 10.1002;
- (8) "child" has the meaning given in
 - (A) 7 AAC 50.990 if referring to a child for whom services are provided under 7 AAC 50; or
 - (B) 7 AAC 57.990(b) if referring to a child for whom services are provided under 7 AAC 57;
- (9) "child care center" has the meaning given in 7 AAC 57.990(a) ;
- (10) "child care facility" has the meaning given in
 - (A) 7 AAC 50.990 if referring to a child for whom services are provided under 7 AAC 50; or

(B) 7 AAC 57.990(b) if referring to a child for whom services are provided under 7 AAC 57;

(11) "child care group home" has the meaning given in 7 AAC 57.990(a) ;

(12) "child care home" has the meaning given in 7 AAC 57.990(a) ;

(13) "clean" or "cleaned" means made free of soil, or to make free of soil by

(A) washing in warm, soapy water and rinsing; or

(B) using another approved method if use of water is inappropriate for the item being cleaned;

(14) "communicable disease" means a disease or condition that is contagious or transmissible;

(15) "contaminate" or "contamination" means contact with or from

(A) dust, insects, rodents, or other pests;

(B) unsanitary equipment or utensils;

(C) a body fluid, including saliva, blood, mucus, vomit, urine, feces, or an injury discharge;

(D) unnecessary handling;

(E) flooding, draining, leakage from overhead, or condensation;

(F) poisonous or toxic materials; or

(G) any substance or organism that might threaten human health;

(16) "CPR" means cardiopulmonary resuscitation;

(17) "department" means the Department of Health and Social Services;

(18) "disinfect" and "disinfected" means the destruction, through use of an appropriate disinfection agent, of disease-causing microorganisms on an inanimate object or surface that renders the object or surface safe for use or handling;

(19) "easily cleanable" means having surfaces that are readily accessible and designed so that residue may be effectively removed by normal cleaning methods;

(20) "entity" means the administration, program, and physical plant of a business or other premises subject to the applicable provisions of this chapter; "entity" includes other parts of the building housing the entity and adjoining grounds over which the administrator has direct control;

(21) "EPA" means United States Environmental Protection Agency;

(22) "food" means a liquid or solid substance consumed by humans, including water or another beverage, a confection, condiment, food ingredient, food additive, or ice, or a substance that enters into the composition of these things, whether simple, blended, mixed, or compounded;

(23) "foster group home" has the meaning given in 7 AAC 50.990;

(24) "foster home" has the meaning given in AS 47.32.900 ;

(25) "general variance" means a variance described in 7 AAC 10.9500;

(26) "gloves" mean a device made of natural rubber, vinyl, or synthetic material such as neoprene, polyvinyl chloride, or styrene butadiene, worn on the caregiver's hands to prevent contamination between the caregiver and the person receiving care;

(27) "handsink" means a lavatory

(A) equipped to provide hot and cold running water in a manner that meets the requirements of 7 AAC 10.1035(a) (9) and (10); and

(B) used solely for washing hands, face, arms, or other portions of the body;

(28) "imminent danger" means a condition with the potential to adversely affect public health, safety, or welfare; "imminent danger" includes

(A) the extended loss of a potable water supply;

(B) an extended power outage;

(C) a sewage backup into the entity;

(D) a natural disaster;

(E) a disease or illness associated with the operation of the entity; and

(F) a major insect or rodent infestation;

(29) "impervious bag" means a bag designed to prevent transfer, seepage, or flow of moisture into or from the bag;

(30) "in care" means receiving care at an entity;

(31) "infant" has the meaning given in 7 AAC 57.990(a) ;

(32) "insect" has the meaning given in 18 AAC 90.990; the definition of "insect" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;

(33) "maternity home" has the meaning given in AS 47.32.900 ;

- (34) "parent" means a birth or adoptive parent or a legal guardian of a child;
- (35) "pest" has the meaning given in 18 AAC 90.990; the definition of "pest" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;
- (36) "pesticide" has the meaning given in 18 AAC 90.990; the definition of "pesticide" in 18 AAC 90.990, as revised as of May 17, 2006, and as amended from time to time, is adopted by reference;
- (37) "potable water" means water that is safe for drinking, culinary, and other domestic purposes;
- (38) "premises" means a place or location used in conjunction with the activities of an entity; "premises" includes all or portions of structures, land, vehicles, equipment, supplies, water supply, wastewater system, and plumbing;
- (39) "recipients of services" means individuals receiving care or services in an entity;
- (40) "residential child care facility" has the meaning given in AS 47.32.900 ;
- (41) "residential group home" has the meaning given in 7 AAC 50.990;
- (42) "residential psychiatric treatment center" has the meaning given in AS 47.32.900 ;
- (43) "sanitize" means to reduce the numbers of microorganisms on cleaned surfaces and equipment to a safe level by application of an appropriate sanitizing agent;
- (44) "single-use" means designed to be used once and then discarded, as with disposable diapers, disposable wipes, and disposable paper products;
- (45) "toddler" has the meaning given in 7 AAC 57.990(a) ;
- (46) "toilet" means a plumbing fixture designed to receive solid and liquid human waste;
"toilet"
- (A) includes a
- (i) water closet that conveys waterborne waste through an integral trap seal; and
 - (ii) nonflushing toilet, including an incinerating, composting, or humus toilet or vault privy; in this sub-subparagraph, "vault privy" means a holding tank with a seat or seats, or other appurtenances attached, that allows for excretion of human wastes directly into the tank; and
- (B) does not include a pit privy; in this subparagraph, "pit privy" means a structure that
- (i) is not a vault privy as defined in (A)(ii) of this paragraph;
 - (ii) receives urine and excrement that is not waterborne; and

(iii) is the final disposal site and not a temporary storage facility;

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

(48) "water play table" means a table designed for play that can be filled with water;

(49) "working day" means a day other than Saturday, Sunday, or a state holiday.

History: Eff. 6/23/2006, Register 178

Authority:

AS 18.05.010

AS 18.05.040

AS 44.29.020

AS 47.14.120

AS 47.32.010

AS 47.32.030

AS 47.33.005

AS 47.33.010

Editor's note: Information regarding the universal precautions referred to in 7 AAC 10.9990 is available from the United States Department of Health and Human Services, Centers for Disease Control and Prevention, Public Inquiries/MASO, Mailstop F07, 1600 Clifton Road, Atlanta, GA 30333, 1-800-311-3435, or may be obtained from that agency's website: <http://www.cdc.gov/ncidod/hip/Blood/UNIVERSA.HTM>.