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# **Regulations**





**7 AAC 75.010. APPLICABILITY.** (a) The requirements of this chapter apply to the licensure and operation of those assisted living homes that are the responsibility of the Department of Health and Social Services and those that are the responsibility of the Department of Administration, as follows:

(1) an assisted living home licensed on or after April 6, 2002, is subject to all applicable requirements of this chapter;

(2) an assisted living home licensed before April 6, 2002 is subject to all applicable requirements of this chapter, except that the home is exempt from

(A) those training and experience requirements of 7 AAC 75.230(c), that an administrator of a home on April 6, 2002 does not already meet; that administrator shall comply with the continuing education requirements of 7 AAC 75.220(e); however, an administrator hired after April 6, 2002 is subject to all requirements of 7 AAC 75.230 in addition to all other requirements for administrators in this chapter; and

(B) the requirements of 7 AAC 75.260(a)(7), dealing with bedroom standards.

(b) A home licensed under 7 AAC 50 or AAC 57 is exempt from licensing under AS 47.33 and this chapter. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

Authority: AS 47.32.010 AS 47.33.005 AS 47.32.030 AS 47.33.010

**7 AAC 75.020. TYPES OF LICENSE; DURATION; LICENSING RESPONSIBILITY.** (a) There are two types of assisted living home licenses, as follows:

(1) probationary, for homes

(A) that have not previously been licensed under AS 47.33 and this chapter;  
or

(B) for which a standard license has been converted to probationary status because of noncompliance with AS 47.33 or this chapter;

(2) standard, for homes that have passed the probationary period.

(b) Subject to the possibility of suspension or revocation under AS 47.33 and this chapter, a license is valid for the following periods:

(1) probationary: a period set by the licensing agency, not to exceed two years, with a possible one-year extension; and

(2) standard: two years, except as stated in 7 AAC 75.090.

(c) Repealed 4/6/2002.

(d) A license will be issued to a home providing care

(1) primarily to persons with a mental or developmental disability, in which case it is the responsibility of the Department of Health and Social Services;

(2) primarily to persons who have a physical disability, who are elderly, or who suffer from dementia, but who are not diagnosed as chronically mentally ill, in which case it is the responsibility of the Department of Administration; and

(3) to approximately equal numbers of persons described in (1) and (2) of this subsection, or to a home seeking its probationary license and for which the administrator has not yet decided which specific category of persons to serve; in such a case the Department of Health and Social Services and the Department of Administration will jointly consider the purposes of AS 47.33, the service features of the particular home, and, if any, the preference of the home, and jointly decide which one of those agencies will have the sole licensing responsibility for that home; a dual license, entitling the home to serve persons described in both (1) and (2) of this subsection, will be issued; an applicant for a dual license may apply to either agency. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.030. POWERS AND DUTIES OF LICENSING AGENCY.** (a) The licensing agency will

(1) license assisted living homes in accordance with AS 47.33 and this chapter;

(2) investigate license applicants, licensees, and homes that are required to be licensed for compliance with AS 47.33 and this chapter;

(3) enforce the standards established by AS 47.33 and this chapter; and

(4) inspect and investigate complaints of abandonment, abuse, exploitation, neglect, or self-neglect in assisted living homes.

(b) The licensing agency may designate by a written agreement conforming to (c) of this section a state, municipal, or private agency to investigate and make recommendations to the licensing agency for the licensing of assisted living homes under procedures and standards of operation established by the licensing agency.

(c) An agreement executed under (b) of this section must include

(1) a description of the respective regulatory responsibilities of the licensing agency and the other agency;

(2) procedures for processing variance requests;

(3) procedures for record maintenance and sharing; and

(4) procedures for appealing the investigative findings and recommendations made by the designated agency for and to the licensing agency. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.040. CONVERSION OF OTHER LICENSES.** Repealed. (Eff. 7/1/95, Register 134; repealed 4/6/2002, Register 162)

**7 AAC 75.050. VOLUNTARY LICENSURE.** The licensing agency may, as time permits, issue a license to an assisted living home that serves one or two adult residents whether or not the residents are related to the owner by blood or marriage, and that is not required by AS 47.33.010 and 47.33.400 to be licensed, but that wishes to become licensed voluntarily. All provisions of this chapter apply to this type of licensure. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.920

**7 AAC 75.060. PROBATIONARY LICENSE.** (a) The licensing agency will issue a probationary license to operate an assisted living home if the licensing agency finds that the application and the home's plan for operation comply with AS 47.33 and this chapter. In determining compliance with AS 47.33 and this chapter, the licensing agency will consider the nature, size, and character of the home and its residents, and whether the prevailing residential standards of the community and neighborhood in which the home is located are protective of life, health, and safety.

(b) At any time before the expiration of a probationary license, but after the assisted living home is operating, the licensing agency may convert a probationary license to a standard license. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.070. STANDARD LICENSE.** (a) The licensing agency will issue a standard license to operate an assisted living home if, upon completion of the probationary period and after inspection or investigation, the licensing agency finds that the home is operating in compliance with AS 47.33 and this chapter.

(b) In determining compliance with AS 47.33 and this chapter, the licensing agency will consider the nature, size, and character of the home and its residents, and whether the prevailing residential standards of the community and neighborhood in which the home is located are protective of life, health, and safety. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.080. APPLICATION FOR LICENSE; MODIFICATION.** (a) A person may not begin operation of an assisted living home until that person has obtained a probationary or standard license from the appropriate licensing agency. A person may not move the location or make a major modification of a licensed assisted living home, or increase the number of residents the home is licensed to serve until that person has obtained approval for a modification of its license

from the licensing agency. An application under this section must be made on a form supplied by the licensing agency. A person may not apply for a license to operate one or more additional homes until each current home has passed the probationary period and been issued a standard license. For purposes of this subsection, “major modification” means a change to the home that, during construction of the modification, would adversely affect the residents, services to residents, or emergency evacuation of residents.

(b) An application for a license to operate an assisted living home must be notarized and must contain

(1) the name, title, address, telephone number, and, if available, electronic-mail address and facsimile number of

(A) the applicant;

(B) each person who has an ownership interest in the home;

(C) the chief executive officer of the unit or subunit of government, if the applicant is a government entity;

(D) the owner of the premises in which the home will be located, if the applicant is not the owner of the premises; and

(E) the administrator of the home;

(2) the name of the assisted living home, if known by a name;

(3) the address of the assisted living home or the proposed new location of the assisted living home;

(4) evidence that the administrator meets the requirements of 7 AAC 75.21 7 AAC 75.220, and 7 AAC 75.230;

(5) repealed 4/6/2002;

(6) the number of individuals within the maximum occupancy number established by the fire safety inspection required under 7 AAC 10.1010 that a home intends to serve;

(7) the number of residents the home intends to serve who are expected to be persons who

(A) have a primary diagnosis of mental illness or physical or developmental disability; or

(B) are elderly or suffering from dementia, but who are not mentally ill;

(8) the services the home proposes to offer;

(9) copies of all permits and approvals required by state or local government agencies, other than the licensing agency, for construction or operation of the home;

(10) any request for a general variance from a provision of AS 47.32, 7 AAC 10.1000 - 7 AAC 10.1095, or this chapter, as provided in 7 AAC 10.9500 - 7 AAC 10.9535 and 7 AAC 75.405;

(11) a staff plan that describes the number of employees that will be employed by the home and each employee's responsibilities; the application must indicate that the home is prepared to modify the proposed staff plan to meet the terms of an individual residential services contract executed under AS 47.33.210 or an assisted living plan prepared under AS 47.33.220 and 47.33.230;

(12) a disaster preparedness and emergency evacuation plan that complies with 7 AAC 10.1010 to protect the residents of the home from a disaster or other emergency; (Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

(13) a business plan, if applying to operate a home licensed for 11 or more residents or to operate multiple homes; the plan must include a description of the plan, services offered, the location of the business, a management and personnel plan, and projected detail of anticipated monthly expenses for six months; and

(14) information concerning any denial of a prior application, voluntary termination of a license during an investigation, or termination of an administrator or care provider for cause.

(c) An application to modify a license must contain the applicant's name, title, address, telephone number, and, if available, electronic-mail address and facsimile number. The application must also describe the modification sought. If the modification is to increase the number of residents served to 11 or more, the application must also include the business plan described in (b)(13) of this section. (Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162)

Authority: AS 47.32.010 AS 47.33.005 AS 47.32.030 AS 47.33.010

**7 AAC 75.085. INSPECTION OF FINANCIAL RECORDS.** If requested by the licensing agency, the home shall allow the agency to inspect the home's financial records to determine whether the home has sufficient financial resources to operate for a minimum of three months without considering resident income. (Eff. 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.090. RENEWAL; STAGGERED RENEWAL; EXTENSION.** (a) Before a license expires, the licensing agency will notify the licensee that the license is due for renewal.

(b) The licensing agency may inspect an assisted living home at any time before a license expires, to determine compliance with AS 47.33 and this chapter and eligibility for renewal.

(c) If the licensing agency finds that the home is not in compliance with AS 47.33 and this chapter, the home, in coordination with the licensing agency, shall develop a plan of correction with a date for achieving compliance with each provision found to be in noncompliance. If the home is in substantial compliance by each applicable date set out in the plan of correction, the licensing agency will issue a probationary license. If the home is in compliance, the licensing agency will issue a standard license.

(d) If the licensing agency finds that the home is in compliance with AS 47.33 and this chapter, has provided services to residents in accordance with its contracts and plans of care, has maintained the home in good repair, and is in compliance with all applicable local and state building code, fire code, and sanitation code requirements, the agency will renew the home's standard license for two years.

(e) If several licensees apply for renewal within a short time, the licensing agency may stagger the license renewal dates to facilitate handling the renewals. The licensing agency may adjust renewal dates to facilitate the licensing of each assisted living home located in the same geographic area at the same time. The licensing agency will not extend or adjust a renewal date for an assisted living home that, during the licensing period, has had more than one complaint filed against it for which the licensing agency

- (1) and the home have developed a plan of correction; or
- (2) has issued a notice of violation.

(f) Repealed 4/6/2002.

(g) Repealed 4/6/2002.

(h) Repealed 4/6/2002.

(i) The licensing agency will promptly notify the licensee in writing of any rescheduled renewal date. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.400 AS 47.33.540 AS 47.33.920 AS 47.33.410

**7 AAC 75.100. FEES.** (a) An application for a license, or renewal of a license, must be accompanied by the appropriate fee, as follows:

- (1) voluntary license..... \$ 25
- (2) probationary or standard license for homes with capacity to serve three to five residents.....\$75
- (3) probationary or standard license for homes with capacity to serve six or more residents.....\$150.

(b) In addition to the base license application fee, set out in (a) of this section, an application under (a)(2) of this section must be accompanied by a fee of \$25 for each resident

accommodation beyond three that the home seeks licensure to provide, and an application under (a)(3) of this section must be accompanied by a fee of \$25 for each resident accommodation beyond six that the home seeks licensure to provide.

(c) An assisted living home that applies for a license modification to move its location or make some other major modification, or to expand its capacity to serve additional residents, at any time other than at the time of license renewal, shall

(1) in the case of a modification not involving additional resident capacity, pay a fee of \$25;

(2) in the case of a modification seeking only to add to the home's resident capacity, pay \$25 for each additional resident accommodation, regardless of the amount of time left in the current license period;

(3) in the case of a home seeking modifications described in both (1) and (2) of this subsection, pay the fees stated in both (1) and (2).

(d) After the first two onsite visits following an inspection that reveals noncompliance with AS 47.33 or this chapter, the licensee shall pay a fee of \$150 for each additional onsite visit by the licensing agency that results from failure of the licensee to achieve and maintain compliance within a reasonable time set by the agency.

(e) Fees due under this section are nonrefundable. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.910 AS 47.33.920

**7 AAC 75.110. CONTENT OF LICENSE; POSTING.** (a) A license to operate an assisted living home will state

(1) whether it is a probationary or standard license;

(2) the effective date of the license;

(3) the name of the licensee;

(4) the location and mailing address of the home to which the license applies;

(5) the number of residents the home is licensed to serve and which licensing agency will monitor the home's compliance with AS 47.33 and this chapter;

(6) the expiration date of the license;

(7) the special conditions, waivers, or variances that have been approved by the licensing agency; and

(8) the address and phone number of the licensing agency.

(b) An assisted living home shall post the license in the home or otherwise make it readily accessible to residents, prospective residents, or resident representatives, service providers, staff, and the public. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.120. DENIAL OF LICENSE.** (a) If the licensing agency denies an application for a license, or a license renewal, the agency will deliver to the applicant by hand or certified mail a notice of denial containing a summary of the reasons for denial of the application.

(b) If an application is denied, the applicant may reapply or may contest the denial as provided in the Administrative Procedure Act, AS 44.62.

(c) If the applicant decides to contest the denial, the applicant must appeal in writing, within 30 days after receiving the denial, to the director of the division of senior services in the Department of Administration or the director of the division of mental health and developmental disabilities in the Department of Health and Social Services, depending upon which agency denied the application. In the appeal petition, the applicant may request an oral hearing. If an oral hearing is not requested, the appeal will be decided on the basis of review of the original record and whatever additional documents and written argument the applicant presents with the appeal petition. The denial under (a) of this section serves as the statement of issues under AS 44.62.370. The decision of the director constitutes the decision of the licensing agency for the purposes of reconsideration, under AS 44.62.540, and judicial review, under AS 44.62.560. (Eff. 7/1/95, Register 134)

Authority: AS 47.33.410 AS 47.33.560 AS 47.33.920 AS 47.33.550

**7 AAC 75.130. LICENSE NOT TRANSFERABLE.** Unless modified under 7 AAC 75.080, a license issued under this chapter is limited to the location, individuals, and organizations named in the application and may not be transferred to a different location, individual, or organization. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.140. ACCESS AND INSPECTION.** (a) An applicant for a license and a licensee shall permit representatives of the licensing agency to inspect a home when necessary to implement AS 47.33 and this chapter.

(b) If an applicant for a license refuses to permit an inspection, the licensing agency may seek a judicial order allowing access and inspection under AS 47.33.520.

(c) A licensee that refuses to allow access and inspection is in violation of AS 47.33. The licensing agency may prepare a notice of violation under AS 47.33.530, impose administrative sanctions under AS 47.33.550 and 7 AAC 75.570, and seek a judicial order allowing access and inspection under AS 47.33.520.



(d) If the Department of Administration or the Department of Health and Social Services has reason to believe that a home is operating as an assisted living home and has not applied for a license or refuses to permit an inspection, the department may prepare a notice of violation under AS 47.33.530 and seek a judicial order allowing access and inspection under AS 47.33.520. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.520 AS 47.33.920

**7 AAC 75.210. ORGANIZATION; ADMINISTRATION; STAFF.** (a) An assisted living home shall

(1) provide the licensing agency with the name, address, telephone number, and, if available, electronic-mail address and facsimile number of the individual or entity ultimately responsible for operation of the home or proposed home and, if the home is operated by an association, corporation, or other entity, the name, address, telephone number, and, if available, electronic-mail address and facsimile number of each member of its board or governing body and the executive director of the board or governing body;

(2) appoint an administrator who meets the requirements of 7 AAC 75.230 and an administrator designee to act on the administrator's behalf for any period during which the administrator is on vacation, is ill, or is otherwise unable to perform regular duties for 24 hours or more; if the administrator designee will be required to manage the daily operation of the home for

(A) less than 90 consecutive days, the designee must meet the requirements of 7 AAC 75.215 and 7 AAC 75.220; the administrator designee must be available and must receive proper orientation to manage the daily operation of the home in the administrator's absence; or

(B) 90 consecutive days or longer, the designee must have the same qualifications as an administrator under 7 AAC 75.230;

(3) adopt written personnel practices and, at the time of employment, inform each employee of the individual to whom the employee is responsible, the organization of the home and physical plant layout, the employee's duties and responsibilities, including those to be carried out in emergencies, and the policies, procedures, and equipment relevant to those duties and responsibilities;

(4) provide the licensing agency with a current master list, updated as necessary, that includes the name, address, and telephone number of each resident and the name, address, telephone number, and, if available, electronic-mail address and facsimile number of each resident's representative; a home that serves three or more residents shall maintain a current copy of the master list in at least one place that can be easily accessed if the home must be evacuated;

(5) ensure that recordkeeping complies with AS 47.33.070 and uses forms prescribed or approved by the licensing agency for the preparation and protection of resident records;

(6) establish policies and procedures for the completion of residential services contracts and involuntary termination of those contracts in compliance with AS 47.33.210 and 47.33.360, respectively;

(7) Repealed 6/24/2004

(8) Repealed 6/24/2004

(b) The governing body of a home operated by an association, corporation, or other entity shall

(1) determine policy and provide for implementation of that policy by an administrator;

(2) select an administrator and evaluate the administrator's performance; and

(3) maintain minutes of meetings, relevant portions of which must be made available to the licensing agency to enable the licensing agency to carry out its responsibilities under AS 47.33 and this chapter.

(c) An assisted living home shall employ the type and number of care providers and other employees necessary to operate the home in compliance with AS 47.33 and this chapter. The home must have a sufficient number of care providers and other employees with adequate training to implement the home's general staffing plan and to meet the specific needs of residents as defined in the residents' residential services contracts and assisted living plans.

(d) Subject to (e) of this section, an assisted living home shall

(1) have on duty a care provider or another employee with documented proof of

(A) cardiopulmonary resuscitation (CPR) training provided within the previous two years by an instructor certified as required in 7 AAC 26.985; the training must be provided through the

(i) American Red Cross;

(ii) American Heart Association's CPR for Family and Friends Training Program or a more advanced program offered by the American Heart Association; or

(iii) an organization equivalent to those listed in (i)-(ii) of this subparagraph, as determined by the licensing agency; and

(B) first aid training provided within the previous three years by an instructor certified by the American Red Cross, the American Heart Association, or an equivalent organization as determined by the licensing agency; and

(2) have the means and materials available to enable the home to implement the home's disaster preparedness and emergency evacuation plan required by 7 AAC 10.1010.

(Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

(e) If the training required by (d)(1) of this section is not regularly available within 100 miles of where the home is located, the administrator shall ensure that care providers and other employees obtain this training not less than every three years. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.32.010 AS 47.33.010 AS 47.32.030 AS 47.33.070  
AS 47.33.005

**7 AAC 75.215. Barrier crimes, criminal history checks, and centralized registry.** An assisted living home is subject to the applicable requirements of AS 47.05.300 – 47.05.390 and 7 AAC 10.900 – 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry). (Eff. 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181)

**Authority:** AS 47.05.300 AS 47.32.010 AS 47.05.310 AS 47.32.030  
AS 47.05.320 AS 47.33.005 AS 47.05.330 AS 47.33.010  
AS 47.05.340

**7 AAC 75.220. GENERAL REQUIREMENTS.** (a) An assisted living home shall provide safeguards to ensure that persons entering or living in the home, including employees, volunteers, contractors, and visitors do not abuse, neglect, or exploit a resident of the home. An assisted living home shall

(1) develop and implement written policies and procedures that prohibit the abuse, neglect, exploitation, and mistreatment of residents;

(2) report alleged or suspected abuse to a local, municipal, or state law enforcement agency;

(3) take any necessary action to remove the potential for further abuse, neglect, exploitation, or mistreatment of a resident or further misappropriation of a resident's property;

(4) document alleged or suspected incidents of abuse, neglect, exploitation, or mistreatment by an employee, a volunteer, a contractor, a visitor, or another resident;

(5) investigate alleged or suspected incidents of abuse, neglect, exploitation, or mistreatment by an employee, a volunteer, a contractor, a visitor, or another resident;

(6) document the result of the investigation and the corrective action taken; and

(7) submit the documentation prepared under this subsection to the department as required in AS 47.32.200(c).

(b) A person seeking to be associated with an assisted living home in a manner described in 7 AAC 10.900(b) shall provide

(1) the names, addresses, and telephone numbers of at least three character references who are unrelated to the person seeking association with the assisted living home;

(2) at least two employment references; an employment reference may also serve as a character reference required under (1) of this subsection; and

(3) the signed release of information authorization and other items required to request a criminal history check under 7 AAC 10.910.

(Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.340	AS 47.33.010	AS 47.05.310
	AS 47.32.010	AS 47.05.320	AS 47.32.030	AS 47.05.330
	AS 47.33.005			

(c) A person who will be in direct contact with residents in an assisted living home shall provide evidence to the administrator that the person is free from active pulmonary tuberculosis before contact with a resident. This evidence must be provided annually and must be placed in the person's file for review by the licensing agency.

(d) Before hiring, the administrator shall ensure that each person who will be in direct, unsupervised contact with residents in an assisted living home has sufficient language skills to meet the needs of the residents of the home and the ability to access emergency services, including giving clear directions to emergency personnel of the home's location and describing the nature of the emergency in the primary language of the community. The administrator shall assess language skill level for employees, contractors, and volunteers. The licensing agency will assess the language skill level of the administrator.

(e) Each administrator, each administrator designee who will serve in that capacity for 90 consecutive days or longer, and each care provider who is an employee of an assisted living home shall participate in continuing education that is relevant to that person's primary job responsibilities and the ongoing care of residents. If courses for continuing education are not available within 100 miles of where the home is located or through correspondence or distance learning, the administrator shall ensure that the continuing education is obtained not less than every 18 months. Training requirements are as follows:

(1) each administrator shall complete 18 clock hours of continuing education annually;

(2) each care provider shall complete 12 clock hours of continuing education annually;

(3) a home may count in-service training as continuing education if that training increases the knowledge, abilities, or skills of care providers and is approved by the licensing agency;

(4) continuing education, whether in-service training or received from a state agency, a seminar, or a university, must be documented and placed in the employee's personnel file for review and approval by the licensing agency.

(f) An assisted living home is subject to the reporting requirements of AS 47.24.010

(Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181; am 3/7/2009, Register 189)

<b>Authority:</b>	AS 47.05.300	AS 47.05.330	AS 47.32.030	AS 47.05.310
	AS 47.05.340	AS 47.33.005	AS 47.05.320	AS 47.32.010
	AS 47.33.010			

**7 AAC 75.230. ADMINISTRATOR.** (a) An assisted living home shall have on staff an administrator who is at least 21 years of age and meets the requirements of 7 AAC 75.215, 7 AAC 75.220, and this section.

(b) If the administrator does not manage the daily operation of the home, the administrator, or the governing body of a larger organization responsible for the home, shall appoint a resident manager who meets the requirements for an administrator under this chapter.

(c) In addition to the other requirements of this chapter, an individual may not serve as an administrator of an assisted living home unless the individual meets the training and experience requirements of this subsection. The licensing agency will accept a baccalaureate or higher degree in gerontology, health administration, or another health-related field in place of all or part of the required experience, if the degree work serves, to the licensing agency's satisfaction, as an equivalent to the required experience. Training and experience requirements are as follows:

(1) for a home licensed to serve 1-10 residents, the individual must fulfill at least one of the following requirements:

(A) the individual must complete an approved management or administrator training course and have at least one year of documented experience, relevant to the population of residents to be served, as a care provider, if the administrator will be providing direct care in the home;

(B) the individual must

(i) complete a certified nurse aide training program that the Board of Nursing has approved under 12 AAC 44.830, or that is equivalent in content to the requirements of 12 AAC 44.835(c); and

(ii) have at least one year of documented experience, relevant to the population of residents to be served, as a care provider;

(C) the individual must have at least two years of documented experience, relevant to the population of residents to be served, as a care provider, with documented skills or training relevant to the population of residents to be served;

(D) the individual must have sufficient documented experience in an out-of-home care facility, and sufficient training, education, or other similar experience to fulfill the duties of an administrator of the type and size of home where the individual is to be employed and to meet the needs of the population of residents to be served; an administrator under this subparagraph is subject to licensing agency approval on a case-by-case basis; for purposes of this subparagraph, an out-of-home care facility includes a foster care home, a board and care home, and a nursing home;

(2) for a home licensed to serve 11 or more residents, or if operating multiple homes with a total capacity of 11 or more residents, the administrator must fulfill at least one of the following requirements:

(A) the individual must complete an approved management or administrator training course and have at least two years of documented experience, relevant to the population of residents to be served, as a care provider, if the administrator will be providing direct care in the home;

(B) the individual must

(i) complete a certified nurse aide training program that the Board of Nursing has approved under 12 AAC 44.830, or that is equivalent in content to the requirements of 12 AAC 44.835(c); and

(ii) have at least two years of documented experience, relevant to the population of residents to be served, as a care provider;

(C) the individual must have at least five years of documented experience, relevant to the population of residents to be served, as an administrator or staff supervisor of a home serving 10 or fewer residents;

(D) the individual must submit proof that the individual is a licensed practical nurse or a registered nurse with documented experience relevant to the population of residents to be served. (Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162)

Authority: AS 47.33.100 AS 47.33.410 AS 47.33.920

**7 AAC 75.240. CARE PROVIDER.** (a) An individual may not be hired or retained as a care provider in an assisted living home subject to AS 47.33 and this chapter unless the person meets the requirements of 7 AAC 75.215 and 7 AAC 75.220 and is at least

(1) 21 years of age if the individual will serve as a supervisor of other care providers;

(2) 18 years of age if the individual will serve as a care provider working without direct supervision; or

(3) 16 years of age if the individual will serve only as a care provider and has access to assistance from the administrator or another care provider who is at least 21 years of age.

(b) An administrator shall ensure and document that each care provider, within the first 14 days of employment, is oriented to the assisted living home's policies and procedures, including emergency procedures, fire safety, resident rights, prohibition against abuse, neglect, exploitation, and mistreatment of residents, recognition of abuse, neglect, exploitation, and mistreatment of residents, reporting requirements under AS 47.24.010, universal precautions for infection control, biohazards, applicable state regulations and statutes, resident interaction, any house rules established under AS 47.33.060, sanitation, duties and responsibilities, medication management and security, and physical plant layout. Before caring for a resident without direct supervision, a care provider shall receive the orientation required in this subsection and, unless the care provider has sufficient documented experience working with the population of residents to be served, shall work under the direct supervision of the administrator or an experienced care provider who is at least 21 years of age for not less than three complete work days. Direct supervision must be documented in the personnel file of the supervised care provider.

...

(Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 3/7/2009, Register 189)

**Authority:** AS 47.33.010 AS 47.33.410 AS 47.33.920 AS 47.33.100

(c) For purposes of this section, "direct supervision" means that the administrator, or a care provider who is at least 21 years of age and has received the training required under this chapter, is present in the same building as the individual being supervised and available for consultation or assistance. (Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162)

**Authority:** AS 47.33.010 AS 47.33.410 AS 47.33.920 AS 47.33.100

**7 AAC 75.250. ADVERTISING.** (a) An assisted living home may not advertise that it is a "nursing home" or that it provides "nursing care," unless it holds a license under AS 18.20.020 - 18.20.130.

(b) A home may advertise that it provides housing, food service, personal assistance, assistance with the activities of daily living, or health-related services, as described in AS 47.33.010 and 47.33.020, including intermittent nursing care or short-term skilled nursing care. (Eff. 7/1/95, Register 134)

**Authority:** AS 47.33.010 AS 47.33.020 AS 47.33.920

**7 AAC 75.260. GENERAL ENVIRONMENTAL REQUIREMENTS.** (a) A home shall ensure that each resident has

(1) room furniture that is typical for residents of homes in the community and neighborhood in which the assisted living home is located; the furniture may be provided by the resident;

(2) storage space for clothing and personal possessions;

- (3) adequate linen, soap, and personal hygiene facilities necessary for cleanliness;
- (4) a signal device, as provided for in the assisted living plan of a resident who must use a device when verbal communication is not possible;
- (5) reasonable privacy when sharing a room;
- (6) appropriate storage and work areas adjacent to the area of use to accommodate the following functions, if conducted on the premises:
  - (A) food preparation and serving; and
  - (B) laundry; and
- (7) a bedroom that meets the following standards, subject to 7 AAC 75.070(b):
  - (A) if the bedroom is for single occupancy, it must contain at least 80 square feet of open floor space, measured before furniture is placed in the room;
  - (B) if the bedroom is for double occupancy, it must contain at least 140 square feet of open floor space, measured before furniture is placed in the room;
  - (C) no more than two residents may be assigned to a bedroom.

(b) A home must occupy a building that is used exclusively for assisted living, except that a home may be licensed in a building that has more than one occupancy if

- (1) the other occupancy is consistent with the health, safety, comfort, and well-being of the residents of the assisted living home; and
- (2) the other users of the building comply with applicable state and municipal building and fire codes and environmental health codes. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.265. FOOD SERVICE.** (a) An assisted living home shall offer three balanced, nutritious meals and at least one snack daily at consistent times. A home shall ensure that the meals and snacks offered include the recommended number of servings of each food type set out in the United States Department of Agriculture publication, *The Food Guide Pyramid*, as revised as of October 1996 and adopted by reference. The home shall offer a wide variety of food that includes fresh fruits and vegetables as often as possible.

(b) The home shall consider each resident's health-related or religious restrictions, cultural or ethnic preferences in food preparation, and preference for smaller portions, as reflected in the resident's residential services contract executed under AS 47.33.210 and assisted living plan prepared under AS 47.33.220 and 47.33.230. The home shall also consider a resident's decision, from time to time, to be served smaller portions even if that issue is not addressed in the contract or plan.



(c) An assisted living home shall keep a written record of each day's menu, document whether the meals served were as described in those menus, and keep the documented menus on file for at least one year for review by the licensing agency. (Eff. 9/28/2001, Register 159)

Authority: AS 47.33.410 AS 47.33.920

**Editor's Note:** *The Food Guide Pyramid* adopted by reference in 7 AAC 75.265 is available from the United States Department of Agriculture, Center for Nutrition Policy and Promotion, 1120 20th St., NW, Washington, D.C. 20036-3475 or go to [www.usda.gov/cnpp/pyramid2.htm](http://www.usda.gov/cnpp/pyramid2.htm)

**7 AAC 75.270. Life and fire safety.** An assisted living home must meet the applicable life and fire safety requirements of 7 AAC 10.1010. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

Authority: AS 47.32.010 AS 47.32.030

**7 AAC 75.280. Sanitation and environmental protection.** An assisted living home must satisfy applicable standards for sanitation and environmental protection, including the applicable standards of 7 AAC 10.1000 – 7 AAC 10.1095. An assisted living home shall allow inspection by the department as required by AS 47.32.100 and 7 AAC 10.9600 – 7 AAC 10.9620, and by any municipal authority responsible for ensuring that the home meets applicable municipal sanitation and environmental protection requirements. The home shall maintain a copy of each inspection report for at least two years and make any report from a municipal authority available for department review. The department may request an inspection by the municipal authority on the home's behalf. The home is responsible for any fee charged. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

Authority: AS 47.32.010 AS 47.32.030

**7 AAC 75.290. EMERGENCY SITUATIONS.** (a) If a resident experiences a medical emergency, serious injury, or accident, is involved in assaultive behavior that could injure the resident or another person or that requires police intervention, or is absent without prior notice to the home and could pose a risk of harm to the resident or others, the assisted living home shall

(1) access emergency services, if needed, and provide the emergency care that a reasonably prudent person would provide under the circumstances, including notice to the resident's physician and representative; and

(2) record the date, time, and circumstances of the accident, serious injury, medical emergency, or incident in the resident's file and in any general daily log kept by the home, and provide a copy of the report to the licensing agency as required under 7 AAC 75.340.

(b) An assisted living home shall maintain readily-available first aid supplies appropriate to its size, and post or make readily available the first aid procedures. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.295. USE OF INTERVENTION AND PHYSICAL RESTRAINT.** (a) An assisted living home must have a written procedure regarding the use of physical restraint. That procedure must be approved by the licensing agency under AS 47.33.330.

(b) As provided in AS 47.33.330(a)(4), an assisted living home may use physical restraint if a resident's actions present an imminent danger to the resident or others, but only after other interventions, including the use of a time out, have failed. A time out or physical restraint may not be used as a punishment, as a substitute for a less restrictive form of intervention, or as a convenience for the home's staff. A time out or physical restraint must be terminated as soon as the resident no longer presents an imminent danger to that resident or others.

(c) At the time of a resident's admission to the home, the home shall

(1) explain its approved physical restraint procedures to the resident or resident's representative;

(2) perform an assessment at the time of admission regarding the potential need for the use of time outs or physical restraint, asking for information

(A) about the resident's prior behavior that might indicate a need for the use of time outs or physical restraint; and

(B) that might help minimize use of time outs or physical restraint;

(3) address the need for using time outs or physical restraint in the resident's assisted living plan if the home has reason to believe that time outs or physical restraint may be necessary because the resident's prior behavior or medical condition indicates that the resident may occasionally present an imminent danger to the resident or others; the plan must include information regarding

(A) when time outs or physical restraint should be used;

(B) what forms of physical restraint should be used, based on recommendations from the resident's primary physician; and

(C) any prenotification procedures requested by the resident's representative if the 24-hour notice required by (d)(1) of this section is unsatisfactory to the representative.

(d) If physical restraint is used, the assisted living home shall

(1) notify the resident's representative within 24 hours, unless the representative has agreed, as reflected in the resident's assisted living plan, that notification under (2) of this subsection is sufficient; and

(2) document any use of physical restraint in the written report required under 7 AAC 75.340(a)(4) that includes

(A) the resident's name;

(B) a description of the incident that led to the decision to use physical restraint;

(C) a brief description of any other form of intervention used or attempted before the use of physical restraint;

(D) the type of physical restraint used;

(E) the time when physical restraint began; and

(F) the time when physical restraint ended.

(e) For purposes of this section, a time out is the restriction of a resident, with that resident's consent, to a quiet area or unlocked quiet room for a period not to exceed 30 minutes. A home may not require a resident to take a time out without that resident's consent, and may not use a time out that exceeds 30 minutes, with or without that resident's consent.

(f) For purposes of this section, physical restraint is a manual method that restricts body movement, or a physical or mechanical device, material, or piece of equipment that is attached or adjacent to the resident's body, that prevents the resident from easily removing it, and that restricts movement or normal access to the body. The use of the following safety equipment will not be considered physical restraint if authorized in writing by the resident's primary physician, and if the necessity for its use is set out in the resident's assisted living plan:

(1) self-release safety belts;

(2) lap-top trays;

(3) wedge chair cushions;

(4) concave mattresses; and

(5) bedside rails if used for a resident who

(A) lacks independent mobility but has involuntary movement, including a seizure disorder, that could cause the resident to fall from bed; or

(B) needs the rails to assist in mobility. (Eff. 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.300. ASSISTED LIVING PLAN.** (a) Preparation of an assisted living plan in accordance with AS 47.33.220, 47.33.230, and this chapter shall include a review of any other existing plan of care that may already be in place for the resident. A plan of care already in place for a resident may substitute for the assisted living plan required by AS 47.33.220 and 47.33.230 if the existing plan incorporates substantially the same provisions and addresses the same requirements as would an assisted living plan.

(b) When an existing plan of care cannot be substituted for an assisted living plan, the assisted living plan required by AS 47.33.220 and 47.33.230 must, insofar as possible, incorporate the provisions of the plan of care already in place for the resident.

(c) Evaluation of assisted living plans for residents will take into account the timelines established for evaluation of existing plans of care, and will, insofar as possible, set similar evaluation timelines to avoid duplicative evaluation efforts.

(d) Copies of existing plans of care for a resident shall be placed in the assisted living file, along with the assisted living plan. (Eff. 7/1/95, Register 134)

Authority: AS 47.33.220 AS 47.33.240 AS 47.33.920 AS 47.33.230

**7 AAC 75.305. Determination regarding DECLARATIONS FOR MENTAL HEALTH TREATMENT.** An assisted living home licensed by the Department of Health and Social Services shall make a reasonable effort to determine whether a resident has made a declaration of preferences or instructions regarding mental health treatment under AS 47.30.950 by consulting with the resident, the resident's primary physician, the resident's case manager, the resident's spouse, parent, or guardian, a person in the resident's household, a person designated by the resident, or the resident's representative. (Eff. 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.310. ACCEPTANCE AND MANAGEMENT OF RESIDENTS' MONEY.**

(a) Before an assisted living home accepts the money of a resident for safekeeping and management, the home shall obtain written authorization from the resident or the resident's representative or representative payee. The authorization must

(1) be attested to by a competent witness who has no pecuniary interest in the home or its operations, and who is not connected to the home or its operations in any manner;

(2) indicate exactly which or how much of the resident's money the assisted living home is authorized to manage; and

(3) provide for an amount not to exceed \$100 a month that the assisted living home may keep on hand for the resident to use to meet that resident's day-to-day needs, unless the resident has other sources of money for that purpose.

(b) A home shall establish a system for residents to request withdrawals from the daily-needs money that the home controls. The home shall advise the resident of the available balance of the daily-needs money at the time of each withdrawal and shall keep a record of all withdrawals and balances.

(c) After receiving authorization from the resident or resident's representative to manage the resident's money for the resident, the assisted living home shall

(1) promptly deposit all of the resident's money that the home is authorized to manage, except the money in the resident's daily needs fund, in an interest-bearing designated trust

account in a bank, savings and loan association, or licensed escrow agent, insured by the Federal Deposit Insurance Corporation (FDIC), separate from other money and property of the home; and

(2) provide in writing to the resident, or the resident's representative, the account number and the name and address of the financial institution in which the resident's money has been deposited.

(d) An assisted living home that is authorized to manage the money of more than one resident may deposit it in a common designated residents' trust account only if the home has the capability of tracking the account activity specific to each resident, and then issuing a detailed statement of each resident's money to those residents whose money is commingled in the same account. Those statements shall be provided at least quarterly.

(e) When managing the money of a resident, the assisted living home shall, in accordance with the resident's assisted living plan, spend money only to meet the needs of the resident.

(f) When managing the money of residents through deposits in separate trust accounts, the assisted living home shall

(1) provide each resident or the resident's representative with a copy of each written account statement from the financial institution in which the money has been deposited; and

(2) provide each resident or the resident's representative, without charge, a written, itemized statement, at least quarterly, of all financial transactions involving the resident's money being managed by the home.

(g) Upon a written request by the resident or the resident's representative, the assisted living home shall return to the resident or the resident's representative, within three business days, as much of the resident's money as requested, including any interest accrued from deposits. The money may be returned by means of a check.

(h) Upon a voluntary or involuntary termination of the resident's assisted living contract, the assisted living home shall, within three business days, return to the resident or the resident's representative at least 90 percent of the resident's money, less any accrued charges, whether the money is in a designated trust account or in the resident's daily-needs account. The home shall return all remaining money belonging to the resident within 60 calendar days after termination of the contract.

(i) An assisted living home shall provide a complete accounting of the resident's money to the personal representative, as defined in AS 13.06.050, of a resident's estate within 30 days after the resident's death. In the absence of a personal representative, the home shall provide the accounting and the deceased resident's assets to the public administrator appointed under AS 22.15.310.

(j) If a home or the entity operating the home is sold, the home shall provide the buyer with written verification of all resident money the home is authorized to manage and obtain a signed receipt for such money from the new owner. (Eff. 7/1/95, Register 134)

Authority: AS 47.33.040

AS 47.33.920

**7 AAC 75.320. ANNUAL MONITORING REPORT.** (a) At least once each year, the licensing agency will monitor an assisted living home or will require the home to submit a self-monitoring report to the licensing agency on a form supplied by the agency. The annual report must contain the information requested by the agency, to show that the home continues to comply with AS 47.33 and this chapter.

(b) The failure to submit an annual report as required by the licensing agency, or the submission of a false report, is grounds for issuance of a notice of violation under AS 47.33.530.

(c) The licensing agency may accept the report of a third-party, independent evaluation of an assisted living home, made on behalf of the home, if the report contains substantially the same information required by the licensing agency under this section. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410

AS 47.33.920

**7 AAC 75.330. REFUND OF RENT.** (a) A home's written policy for the refund of advance payments, established in compliance with AS 47.33.030(b), must conform to the following rules:

(1) if a resident terminates a residential services contract by giving notice at least one rental period before the termination is to be effective, the home shall refund an advance rent payment on a prorata basis;

(2) if a resident terminates the contract by giving notice less than one rental period before the termination is to be effective, the home need not refund a payment applicable to the current rental period, but shall prorate the refund of an advance rent payment for a subsequent period; if the home executes a new residential services contract with a new resident in place of the terminating resident, to become effective during the current rental period, the home shall refund the prorata amount of rent applicable to the days of the new contract;

(3) if a resident dies, the home need not refund a payment applicable to the current rental period, but shall prorate the refund of an advance rent payment for a subsequent period; if the home executes a new residential services contract with a new resident in place of the deceased resident, to become effective during the current rental period, the home shall refund the prorata amount of rent applicable to the days of the new contract;

(4) if a home terminates a residential services contract, in accordance with AS 47.33.360, it shall refund an advance rent payment on a prorata basis.

(b) In implementing AS 47.33.030, "advance payment," in the case of rent, does not mean the rent paid at the beginning of a rental period for that period. It means rent advanced for a subsequent rental period. (Eff 7/1/95, Register 134)

Authority: AS 47.33.030

AS 47.33.920

**7 AAC 75.340. NOTIFICATION REQUIREMENTS.** (a) In addition to meeting the reporting requirements of 7 AAC 10.955(c) for the centralized registry established under 7 AAC 10.955, an assisted living home shall provide, on a form supplied by the licensing agency, written notice to the licensing agency, to each affected resident or that resident's representative, and to any service coordinator, as follows:

(1) within 24 hours or on the next business day if

(A) an administrator, a care provider, or an individual who resides in the home, other than a resident receiving services, is 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; for purposes of notice under this subparagraph, a resident is an affected resident if the resident was a victim of the offense committed, or if the offense was committed on the premises of the assisted living home;

(Eff. 4/6/2002, Register 162; am 6/24/2004, Register 170; am 2/9/2007, Register 181)

Authority:	AS 47.05.300	AS 47.05.340	AS 47.33.010	AS 47.05.310
	AS 47.32.010	AS 47.33.080	AS 47.05.320	AS 47.32.030
	AS 47.05.330	AS 47.33.005		

(B) unable to correct a violation constituting an emergency under 7 AAC 75.530 – 7 AAC 75.550;

(C) a resident dies of other than a natural cause; or

(D) physical restraint is used under 7 AAC 75.295; notification under this subparagraph shall be provided only to the resident's representative; notification under this subparagraph need not be made if the resident's assisted living plan indicates that

(i) pre-notification is required as established under 7 AAC 75.295(c)(3)(C); or

(ii) notification under (4) of this subsection is sufficient as established under 7 AAC 75.295(d)(1);

(2) within 48 hours after a resident

(A) experiences a medical emergency, serious injury, or accident; notice under this subparagraph must include information as to whether the resident required more than 24 hours of hospitalization;

(B) is involved in assaultive behavior that resulted in the need for medical treatment for the resident or another individual, or that required police intervention; or

(C) is absent from the home for 24 hours or longer without prior notice to the home;

(3) within 72 hours, and not less than 24 hours, before the termination under AS 47.33.360(a)(1) or (a)(4) of a resident's residential services contract with the home;

(4) within five days if physical restraint is used under 7 AAC 75.295 unless a shorter time is provided in a resident's assisted living plan in accordance with 7 AAC 75.295(c); the notice must include the information required by 7 AAC 75.295(d);

(5) at least 14 days before a change in the home's mailing address;

(6) at least 30 days before

(A) a rate increase;

(B) termination under AS 47.33.360(a)(2), (a)(3), (a)(5), or (a)(6) of a resident's residential services contract with the home; notice must be given in the manner required by AS 47.33.360(b); or

(C) amendment of a residential services contract to require an advance payment under AS 47.33.030; and

(7) at least 90 days before

(A) a closure of the home; or

(B) a relocation of the home.

(b) repealed 6/24/2004

(c) An assisted living home shall notify the licensing agency, in writing, before taking an action that requires

(1) a request for modification when the administrator, individual, or entity named in the current application changes;

(2) a request for licensing agency approval of a modification to increase resident capacity; or

(3) notification because the use of the home will change from exclusive occupancy as an assisted living home to shared use as a business or other enterprise; a notification under this paragraph must include information to show compliance with 7 AAC 75.260(b). (Eff. 4/6/2002, Register 162)

Authority: AS 47.33.080 AS 47.33.410 AS 47.33.920

### **ARTICLE 3. VARIANCES**



**7 AAC 75.405. Request for variance.** (a) Subject to (b) of this section, an assisted living home may request a general variance under 7 AAC 10.9500 – 7 AAC 10.9535 if the home cannot meet an applicable requirement of AS 47.32, 7 AAC 10.1000 – 7 AAC 10.1095, or this chapter.

(b) Variance requests regarding barrier crimes, criminal history checks, and the centralized registry are subject to the provisions of 7 AAC 10.930 – 7 AAC 10.935.

(Eff. 6/24/2004, Register 170; am 6/23/2006, Register 178; am 2/9/2007, Register 181)

Authority: AS 47.05.330 AS 47.32.010 AS 47.32.030 AS 47.05.340

(c) If the department has approved a plan of correction under 7 AAC 10.9610 following a notice of violation under AS 47.32.120, a home may operate under the plan without submitting an application for a general variance. (Eff. 6/24/2004, Register 170; am 6/23/2006, Register 178)

Authority: AS 47.32.010 AS 47.32.030

**7 AAC 75.410. Grounds for variance.** Repealed. (Eff. 7/1/95, Register 134; am 9/28/2001, Register 159; am 4/6/2002, Register 162; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.415. Temporary variance to admit a child for care in an assisted living home.** An assisted living home may apply for a temporary variance to admit a specific child by name for care if the home and a referring agency, in addition to meeting all other applicable requirements of 7 AAC 10.1000 – 7 AAC 10.1095, develop a plan of safety that

- (1) ensures the health and safety of the adults in the home
- (2) ensures the health and safety of the child; and
- (3) is approved by the department, by the child’s representative, and by each resident of the home or the representative for each resident.(Eff. 4/6/2002, Register 162; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

Authority: AS 47.32.010 AS 47.32.030

**7 AAC 75.420. Application for variance, generally.** Repealed. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.430. Application for temporary variance.** Repealed. (Eff. 7/1/95, Register 134; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.440. Evaluation of application for temporary variance.** Repealed. (Eff. 7/1/95, Register 134; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.450. Grant or denial of temporary variance.** Repealed. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.460. Application for permanent variance.** Repealed. (Eff. 7/1/95, Register 134; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.470. Evaluation of application for permanent variance.** Repealed. (Eff. 7/1/95, Register 134; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.480. Grant or denial of permanent variance.** Repealed. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

**7 AAC 75.490. Appeal from denial of variance.** Repealed. (Eff. 7/1/95, Register 134; am 6/24/2004, Register 170; repealed 6/23/2006, Register 178)

#### **ARTICLE 4. VIOLATIONS.**

**7 AAC 75.510. VIOLATION CONFERENCE.** (a) At any time after an assisted living home has received a notice of violation under AS 47.33.530, the home or the licensing agency may request a conference to discuss the violation and the home's options for correcting the violation. A conference, conducted in person or by telephone, will be held no later than seven days after the request is made.

(b) A request for a conference does not extend any other time periods provided for in this chapter. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.550 AS 47.33.920 AS 47.33.540

**7 AAC 75.520. REPORT OF COMPLIANCE IN RESPONSE TO NOTICE OF VIOLATION.** (a) Upon correction of a violation described in a notice of violation, an assisted living home shall, within 10 days after correcting the violation, submit to the licensing agency a written report of compliance. The licensing agency may provide a copy of the report or require the home to provide a copy of the report to each resident of the home or to each resident's representative. The report of compliance must be signed by the administrator of the home and must contain a statement in which the administrator attests to the truth of the contents of the report.

(b) A report of compliance must state how the home corrected each violation listed in the notice of violation.

(c) A report of compliance is a public record. The licensing agency will retain it with the notice of violation to which it refers.

(d) The licensing agency may reinspect the home within 30 days after receiving a report of compliance, upon consideration of the nature of the violation and the terms of correction. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.540 AS 47.33.920

**7 AAC 75.530. VIOLATION CONSTITUTING AN EMERGENCY.** (a) If the licensing agency determines that a violation cited by the agency in a notice of violation issued under AS 47.33.530 constitutes an emergency because of imminent threat to the health or safety of residents, the licensing agency

(1) will, in the notice of violation, state the nature of the emergency, the actions required to comply with AS 47.33 and this chapter, and a specific date and time for the home to correct the violation; and

(2) will determine whether the violation has been corrected within the date and time specified in the notice.

(b) An assisted living home subject to a notice of violation constituting an emergency shall post the notice in a conspicuous location at the home until the licensing agency has determined that the violation has been corrected. (Eff. 7/1/95, Register 134)

Authority: AS 47.33.920

**7 AAC 75.540. TEMPORARY INABILITY TO CORRECT A VIOLATION CONSTITUTING AN EMERGENCY.** If an assisted living home is temporarily unable to correct a violation constituting an emergency, the home shall

(1) notify the licensing agency of the inability to correct the violation, submit a plan of correction indicating the time required to complete the correction, and submit a plan for alternative care arrangements to be used by the home until the violation is corrected; and

(2) provide notice as required by 7 AAC 75.340 that an emergency exists and that the violation cannot be corrected immediately to

(A) each resident of the home or the representative of each resident;

(B) the providers of services to or treatment of the residents; and

(C) the residents' service coordinators. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.550. REFUSAL TO CORRECT A VIOLATION CONSTITUTING AN EMERGENCY.** If an assisted living home refuses, or fails for reasons other than inability, to correct a violation constituting an emergency within the date and time specified in the notice of violation, and the licensing agency determines that the home has the ability to correct the violation, the licensing agency will

(1) impose one or more of the administrative sanctions provided for in AS 47.33.550 and 7 AAC 75.570; and

(2) provide notice as required by 7 AAC 75.340 that an emergency exists and the violation has not been corrected to

(A) each resident of the home or the representative of the resident;

(B) the agencies that provide services or treatment to the residents;

(C) the resident's service coordinators; and

(D) adult protective services in the Department of Administration, division of senior services. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.560. SANCTIONS BASED ON CONVICTION OF ADMINISTRATOR.** If the criminal conviction of an assisted living home administrator forms the basis of a possible administrative sanction against the home under AS 47.33.550 and 7 AAC 75.570, the licensing agency will take into consideration whether the conviction poses a risk to residents or has an adverse effect on the safety or effective operation of the home. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**7 AAC 75.570. SANCTIONS FOR NONCOMPLIANCE.** (a) The licensing agency will consider the following factors in determining an administrative sanction under AS 47.33.550:

(1) the nature and extent of the violation, and the extent to which the health or safety of residents is adversely affected, specifically considering whether the assisted living home's noncompliance

(A) is likely to have only a minor negative impact on a resident;

(B) results in minimal physical, mental, or psychosocial discomfort to a resident;

(C) results in actual harm to a resident as evidenced by compromising a resident's ability to maintain physical, mental, or psychosocial well-being; or

(D) results in a situation in which immediate corrective action is necessary because the noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident;

(2) whether the violation substantially limits the home's ability to render adequate care;

(3) whether the home has a history of violations, and, if so, the nature of the violations and whether the previous violations were corrected;

(4) whether the home failed to provide records to the licensing agency upon request;  
and

(5) whether the home has submitted false or fraudulent information to the licensing agency.

(b) If the licensing agency imposes an administrative sanction, the administrator may appeal that action as described in AS 47.33.550. (Eff. 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

## ARTICLE 5. GENERAL PROVISIONS.

### Section

#### 990. Definitions

**7 AAC 75.990. DEFINITIONS.** In AS 47.33 and this chapter, unless the context requires otherwise,

- (1) “activities of daily living” has the meaning given in AS 47.33.990;
- (2) “administrator” has the meaning given in AS 47.33.990;
- (3) “business day” means a day other than Saturday, Sunday, or a state holiday;
- (4) "care provider" means an employee of an assisted living home who provides direct care services to a resident of the home; “care provider” does not include an individual who is an employee of a care-providing entity that is not affiliated with the home;
- (5) “direct care services” means assistance to a resident of an assisted living home with the activities of daily living and the instrumental activities of daily living;
- (6) "emergency shelter" means a home or facility for transient occupants whose occupancy is short-term in nature, not intended to exceed 30 days; "emergency shelter" includes a respite home or facility;
- (7) “food service” means the offering of food to residents of an assisted living home as required by 7 AAC 75.265;
- (8) "home" has the meaning given in AS 47.33.990;
- (9) “instrumental activities of daily living” has the meaning given in AS 47.33.990;
- (10) "licensing agency" has the meaning given in AS 47.33.990;
- (11) "provide" means to furnish, supply, or make available, whether by the owner or an employee of a home or by means of an independent contractor whose services are procured by the home;
- (12) "resident" has the meaning given in AS 47.33.990;

(13) "residential services contract" means an agreement to provide services in an assisted living home as described in AS 47.33.010(a); "residential services contract" does not include an agreement that is solely for rent or for rent and food service, or an agreement between an individual and a friend, personal care attendant, chore provider, or monitor who provides assistance to the individual;

(14) "service coordinator" has the meaning given in AS 47.33.990;

(15) "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. (Eff. 7/1/95, Register 134; am 4/6/2002, Register 162)

Authority: AS 47.33.410 AS 47.33.920

**Title 7. Health and Social Services.  
Part 1. Administration.**

7 AAC is amended by adding a new chapter to read:

**Chapter 10. Licensing, Certification, and Approvals.**

**Article**

1. Purpose, Applicability, and Administrative Provisions (7 AAC 10.010 – 7 AAC 10.015)
2. Reserved
3. Barrier Crimes, Criminal History checks and Centralized Registry (7 AAC 10.900-7 AAC 10.990)
4. Environmental Health and Safety (7 AAC 10.1000 – 7 AAC 10.1095)
5. General Variance Procedures (7 AAC 10.9500 – 7 AAC 10.9535)
6. Inspections and Investigations (7 AAC 10.9600 – 7 AAC 10.9620)
7. General Provisions (7 AAC 10.9990)

**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 listed in 7 AAC 10.015, and to establish standards for the protection of public health, safety, and welfare. (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

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

**7 AAC 10.015. Applicability of chapter.** The requirements of this chapter apply to the following entities, and are in addition to the requirements of 7 AAC 50, 7 AAC 57, and 7 AAC 75, as applicable:

- (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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.05.310	AS 47.32.020	AS 18.05.040
	AS 47.05.330	AS 47.32.030	AS 44.29.020	AS 47.14.120
	AS 47.33.005	AS 47.05.300	AS 47.32.010	AS 47.33.010

**Title 7. Health and Social Services.**  
**Part 1. Administration.**  
**Chapter 10. Licensing, Certification, and Approvals.**

**Article 3. Barrier Crimes, Criminal History Checks, and Centralized Registry.**

**Section**

- 900. Purpose and applicability; exceptions
- 905. Barrier crimes
- 910. Request for criminal history check
- 915. Criminal history check
- 920. Provisional valid criminal history check
- 925. Monitoring and notification requirements
- 930. Request for a variance
- 935. Review of request for a variance
- 940. Posting of variance decision required
- 945. Revocation of valid criminal history check or variance
- 950. Request for reconsideration
- 955. Centralized registry
- 960. Termination of association
- 990. Definitions

**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.  
(Eff. 2/9/2007, Register 181)

<b>Authority:</b>	AS 47.05.300	AS 47.05.330	AS 47.32.010	AS 47.05.310
	AS 47.05.340	AS 47.32.030	AS 47.05.320	

**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:

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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300            AS 47.05.320            AS 47.32.010            AS 47.05.310  
AS 47.05.340            AS 47.32.030

**7 AAC 10.910. Request for criminal history check.** (a) 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 must request a criminal history check under this section, or provide proof of a valid fingerprint-based criminal history check, for each individual to be associated, or to remain associated, with the entity or provider in a manner described in 7 AAC 10.900(b). An entity or individual must request a criminal history check

(1) when the entity or provider submits an initial application for a license, certification, approval, or finding of eligibility to receive payments from the department;

(2) for a new owner, officer, director, partner, member, or principal of the business organization if there is a change in ownership of the business organization, or if an officer, director, partner, member, or principal of the business organization is replaced; the criminal history check must be completed before the individual begins association unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(3) except as provided otherwise in this section, if the entity or provider wishes to hire or retain an employee, independent contractor, or unsupervised volunteer described in 7 AAC 10.900(b)(3); the criminal history check must be completed before hiring unless the department issues notice of a provisional valid criminal history check under 7 AAC 10.920;

(4) for an individual 16 years of age or older who is not a recipient of services, and who wishes to reside in the entity or to be present as described in 7 AAC 10.900(b)(5) or (6); the criminal history check must be completed before the individual begins association unless

(A) the department issues notice of a provisional valid criminal history check under 7 AAC 10.920; or

(B) the individual is residing in the entity before that individual's 16th birthday; for an individual described in this subparagraph, the entity or provider must submit the information required under (b) of this section within 30 days before the individual's 16th birthday;

(5) at any time requested by the department

(A) to show compliance with 7 AAC 10.900 - 7 AAC 10.990 during inspection, monitoring, or investigation; or

(B) for an individual if the department has good cause to believe that the individual's criminal history has changed; or

(6) on or before April 10, 2007, for each individual who is associated with an entity or provider operating under a current license, certification, approval, or finding of eligibility to receive payments, and who

(A) does not have a valid criminal history check; or

(B) passed a criminal history check conducted before February 9, 2007 that

(i) was not fingerprint-based; or

(ii) was fingerprint-based and conducted more than six years before February 9, 2007.

(b) The entity or provider must submit the following with each request for a criminal history check:

(1) a release of information authorization, on a form provided by the department, signed by the individual for whom the request is submitted;

(2) an authorization, on a form provided by the department and signed by the individual for whom the request is submitted, permitting the department to mark the individual's name in the Alaska Public Safety Information Network (APSIN) under 7 AAC 10.915(e);

(3) two sets of fingerprints for the individual for whom the request is submitted;

(4) a signed statement, on a form provided by the department, from the individual who took the fingerprints, attesting that at least one government-issued picture identification was used to verify the identity of the individual fingerprinted;

(5) the fees required by the Department of Public Safety under 13 AAC 68.900(a)(2)(B) and (5); if the legislature makes an appropriation for the department to pay those fees for unpaid volunteers,

(A) the department will not pay a fee for a volunteer who is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); and

(B) an entity or provider must reimburse the fee to the department if an unpaid volunteer for whom the department paid a fee becomes a paid employee within 60 days after that fee was paid;

(6) an additional \$25 application fee; the department will waive this fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5); if an unpaid volunteer for whom the department waived an application fee becomes a paid employee within 60 days after that fee was waived, the entity or provider must pay the waived fee.

(c) Unless a more frequent fingerprint-based criminal history check is required under federal law, or for certain entities and providers under (f) of this section, a fingerprint-based criminal history check is valid for six years from the date the check became valid under (h) of this section for an individual who

(1) remains associated with an entity or provider in a manner described in 7 AAC 10.900(b), subject to verification under (d) of this section;

(2) becomes re-associated with the same entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with that entity or provider, subject to verification under (e) of this section; or

(3) becomes associated with another entity or provider in a manner described in 7 AAC 10.900(b) within 100 days after terminating association with a previous entity or provider, subject to verification under (e) of this section.

(d) Upon renewal of a license, certification, or approval, or when a finding is made for continued eligibility to receive payments, an entity or individual service provider must provide to the department proof that an individual described in (c)(1) of this section has a valid criminal history check. If the department determines that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section.

(e) An individual described in (c)(2) or (c)(3) of this section must verify with the department that the current fingerprint-based criminal history check is still valid. The entity or provider shall submit to the department a \$25 fee for this verification. The department will waive the fee for an unpaid volunteer, unless that volunteer is a household member who resides in the entity as described in 7 AAC 10.900(b)(5). If an unpaid volunteer for whom the department waived a verification fee becomes a paid employee within 60 days after the department waived the fee, the entity or provider must pay the waived fee. If the department determines during the verification process that the criminal history check is not valid, the department will notify the entity or provider that a request for a new criminal history check must be submitted under this section, and that the department will consider the verification fee the department's application fee under (b)(6) of this section.

(f) Except as provided otherwise in this subsection, and unless the department granted a variance under 7 AAC 10.935, a new criminal history check is not required if a person associated with an entity or provider in a manner described in 7 AAC 10.900(b) is transferred from one site operated by the entity or provider to another site operated by that entity or provider, if all sites are identified in the request for a criminal history check. Before October 1, 2007, an entity or provider must submit the items required under (b) of this section for an individual described in the following list, each time that individual changes employment, regardless of what entities or providers were listed on the request for a criminal history check:

(1) an individual associated with

(A) a nursing facility;

(B) a hospital that provides swing-bed services or that is reimbursed under 7 AAC 43 for treatment described in the definition of "swing-bed day" set out in 7 AAC 43.709; for purposes of this subparagraph,

(i) "hospital that provides swing-bed services" has the meaning given "swing-bed hospital" in 42 C.F.R. 413.114(b); and

(ii) the definition of "swing-bed hospital" in 42 C.F.R. 413.114(b), as revised as of October 1, 2006, is adopted by reference;

(C) an intermediate care facility for the mentally retarded or persons with related conditions;

(D) an assisted living home;

(E) a hospice agency;

(F) a home and community-based services provider as defined in 7 AAC 43.1110;

(G) a home health agency; or

(H) a personal care agency enrolled under 7 AAC 43.786 or 7 AAC 43.787;

(2) an individual providing care coordination, case management, adult day services, or respite care services.

(g) A willful misrepresentation of an individual's criminal or civil history by an entity or provider, or by the individual, is cause for immediate denial of a request for a criminal history check, or revocation of a valid criminal history check.

(h) A valid criminal history check means that, within the applicable timeframes referred to in this section,

- (1) the person submitted all items listed under (b) of this section;
- (2) the department determined that a barrier crime or condition did not exist;
- (3) the person's name has been marked in APSIN on a continuous basis; and
- (4) if applicable, any variance granted under 7 AAC 10.935 is still in effect and authorized by the department, and the individual who was the subject of the variance is associated with the same entity or provider.

(i) Nothing in this section precludes an entity or provider from requiring

(1) an individual who is subject to a criminal history check under 7 AAC 10.900 - 7 AAC 10.990 to pay a cost involved in the submittal of a request under this section; the provisions of this paragraph do not apply to a foster home; or

(2) a criminal history check for an individual who is not otherwise subject to 7 AAC 10.900 - 7 AAC 10.990. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300                      AS 47.05.340                      AS 47.32.030  
AS 47.05.310                      AS 47.32.010

**Editor's note:** Forms referred to in 7 AAC 10.910 may be obtained from the Department of Health and Social Services, Division of Public Health, Section of Certification and Licensing, 619 East Ship Creek Avenue, Suite 232, Anchorage, Alaska 99501, or are available at the department's website: <http://www.hss.state.ak.us/dph/CL/bgcheck>.

**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 18.65.087;

(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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310  
AS 47.05.340 AS 47.32.030 AS 47.05.320

**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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300 AS 47.05.320 AS 47.32.010  
AS 47.05.310 AS 47.05.340 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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310  
AS 47.05.340 AS 47.32.030 AS 47.05.320

**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;

(I) 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. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185)

<b>Authority:</b>	AS 47.05.300	AS 47.05.330	AS 47.32.010	AS 47.05.310
	AS 47.05.340	AS 47.32.030	AS 47.05.320	

**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. (Eff. 2/9/2007, Register 181; am 10/17/2007, Register 184; am 2/13/2008, Register 185)

**Authority:** AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310  
AS 47.05.340 AS 47.32.030 AS 47.05.320

**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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310  
AS 47.05.340 AS 47.32.030 AS 47.05.320

**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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300                      AS 47.05.330                      AS 47.32.010                      AS 47.05.310  
AS 47.05.340                      AS 47.32.030                      AS 47.05.320

**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 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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300 AS 47.05.330 AS 47.32.010 AS 47.05.310  
AS 47.05.340 AS 47.32.030 AS 47.05.320

**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. (Eff. 2/9/2007, Register 181; am 2/13/2008, Register 185)

**Authority:** AS 47.05.300                      AS 47.05.330                      AS 47.32.010                      AS 47.05.310  
AS 47.05.340                      AS 47.32.030                      AS 47.05.320

**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. (Eff. 2/9/2007, Register 181)

**Authority:** AS 47.05.300                      AS 47.05.330                      AS 47.32.010                      AS 47.05.310  
AS 47.05.340                      AS 47.32.030                      AS 47.05.320

**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. (Eff. 2/9/2007, Register 181)

<b>Authority:</b>	AS 47.05.300	AS 47.05.330	AS 47.32.010	AS 47.05.310
	AS 47.05.340	AS 47.32.030	AS 47.05.320	

#### **Article 4. Environmental Health and Safety.**

##### **Section**

1000. Purpose and applicability

1002. Caregivers

1005. Pre-licensing inspection

1010. Life and fire safety

1015. Heating and heating devices

1020. Water supply

1022. Wastewater disposal

1025. Solid waste disposal

1030. Toilet facilities, handsinks, showers, and bathing facilities

1035. Premises

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1045. Universal precautions

1050. Caregiver hygiene

- 1055. Incontinence care
- 1060. Additional standards for facilities licensed to provide care for children
- 1065. Food service and preparation
- 1070. Medications
- 1075. First aid kit and procedures
- 1080. Firearms and ammunition
- 1085. Smoking
- 1090. Animals
- 1093. Pesticide use and notification
- 1095. Toxic substances; poisonous plants

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.030
	AS 18.05.040	AS 47.32.010	AS 47.33.005
	AS 44.29.020	AS 47.32.020	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. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.040 AS 47.32.010 AS 47.32.030 AS 47.14.120

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.060	AS 18.05.040
	AS 47.32.020	AS 47.33.005	AS 44.29.020	AS 47.32.030
	AS 47.33.010	AS 47.14.120	AS 47.32.050	

**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, tsunamis, 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.  
(Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.060	AS 18.05.040
	AS 47.32.020	AS 47.33.005	AS 44.29.020	AS 47.32.030
	AS 47.33.010	AS 47.14.120	AS 47.32.050	

**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. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.010 AS 47.14.120 AS 47.32.030  
AS 18.05.040 AS 47.32.010 AS 47.33.005  
AS 44.29.020 AS 47.32.020 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. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.010 AS 47.32.010 AS 47.32.140 AS 18.05.040  
AS 47.32.030 AS 47.33.005 AS 44.29.020 AS 47.32.130  
AS 47.33.010 AS 47.14.120

**7 AAC 10.1022. Wastewater disposal.** An entity shall provide a domestic wastewater system that complies with applicable provisions of 18 AAC 72. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.010 AS 47.32.010 AS 47.32.140 AS 18.05.040  
AS 47.32.030 AS 47.33.005 AS 44.29.020 AS 47.32.130  
AS 47.33.010 AS 47.14.120

**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. (Eff. 6/23/2006, Register

178)

**Authority:** AS 18.05.010 AS 47.32.010 AS 47.32.140 AS 18.05.040  
AS 47.32.030 AS 47.33.005 AS 44.29.020 AS 47.32.130  
AS 47.33.010 AS 47.14.120

**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:

<b>Minimum Plumbing Fixtures Based on Average Number of Adults or Children in Care, Plus Employees and Family Members in the Entity During Operation*</b>			
<b>Type of Entity</b>	<b>Minimum Number of Toilets</b>	<b>Minimum Number of Handsinks</b>	<b>Minimum Number of Bathtubs or Showers</b>
Child care center	One for 15 or fewer persons  Two for 16 to 30 persons  One additional toilet for each additional 15 or fewer persons	One for 15 or fewer persons  Two for 16 to 30 persons  One additional handsink for each additional 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
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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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
- (6) 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 bactericidal or veridical hand rinse or hand dip between each administration instead of hand washing.

(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 hand washing.

(f) If a caregiver provides tooth brushing 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. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.010 AS 47.32.010 AS 47.32.140 AS 18.05.040  
AS 47.32.030 AS 47.33.005 AS 44.29.020 AS 47.32.130  
AS 47.33.010 AS 47.14.120

**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 hand washing 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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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 hand washing 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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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).  
(Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.33.005	AS 18.05.040
	AS 47.32.030	AS 47.33.010	AS 44.29.020	AS 47.32.130
	AS 47.33.020	AS 47.14.120	AS 47.32.140	

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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 ½ 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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

**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/default.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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.33.005	AS 44.29.020	AS 47.32.130
	AS 47.33.010	AS 47.14.120		

## **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 listed in 7 AAC 10.015.

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

(1) apply to the entities listed 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) (Eff. 6/23/2006, Register 178; am 12/3/2006, Register 180; am 2/9/2007, Register 181)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.130	AS 18.05.040
	AS 47.32.010	AS 47.32.140	AS 44.29.020	AS 47.32.030

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.130	AS 18.05.040
	AS 47.32.010	AS 47.32.140	AS 44.29.020	AS 47.32.030

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.130	AS 18.05.040
	AS 47.32.010	AS 47.32.140	AS 44.29.020	AS 47.32.030

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.130	AS 18.05.040
	AS 47.32.010	AS 47.32.140	AS 44.29.020	AS 47.32.030

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.130	AS 18.05.040
	AS 47.32.010	AS 47.32.140	<b>AS 44.29.020</b>	<b>AS 47.32.030</b>

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.32.130	AS 18.05.040
	AS 47.32.010	AS 47.32.140	AS 44.29.020	AS 47.32.030

**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. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.010 AS 47.14.120 AS 47.32.080  
AS 18.05.040 AS 47.32.010 AS 47.32.130  
AS 44.29.020 AS 47.32.030 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. (Eff. 6/23/2006, Register 178)

**Authority:** AS 18.05.010 AS 47.14.120 AS 47.32.130 AS 18.05.040  
AS 47.32.010 AS 47.32.140 AS 44.29.020 AS 47.32.030

**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. (Eff. 6/23/2006, Register 178)

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

**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 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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.030	AS 47.32.120	AS 18.05.040
	AS 47.32.050	AS 47.32.130	AS 44.29.020	AS 47.32.060
	AS 47.32.140	AS 47.14.120	AS 47.32.100	AS 47.33.005
	AS 47.32.010	AS 47.32.110	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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.030	AS 47.32.140	AS 18.05.040
	AS 47.32.050	AS 47.32.180	AS 44.29.020	AS 47.32.060
	AS 47.33.005	AS 47.14.120	AS 47.32.100	AS 47.33.010
	AS 47.32.010	AS 47.32.110		

**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. (Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.32.010	AS 47.32.140	AS 18.05.040
	AS 47.32.030	AS 47.32.150	AS 44.29.020	AS 47.32.050
	AS 47.33.005	AS 47.14.120	AS 47.32.130	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.  
(Eff. 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.010	AS 47.14.120	AS 47.33.005
	AS 18.05.040	AS 47.32.010	AS 47.33.010
	AS 44.29.020	AS 47.32.030	





# Statutes



## ALASKA STATUTES

### TITLE 47. WELFARE, SOCIAL SERVICES AND INSTITUTIONS

#### Chapter 47.33. ASSISTED LIVING HOMES

##### Article

Scope; Services; Operation (§§ 47.33.005-47.33.100)

Residency; Assisted Living Plans (§§ 47.33.200-47.33.240)

Residency Rights (§§ 47.33.300-47.33.360)

Licensing (§§ 47.33.400-47.33.430)

Enforcement (§§ 47.33.500-47.33.570)

General Provisions (§§ 47.33.910-47.33.990)

**Cross References.**- For transitional provisions, see §§ 16 and 17, ch. 130, SLA 1994 in the Temporary and Special Acts.

**Legislative history reports.**- For governor's transmittal letter on SB 249, from which ch. 130, SLA 1994, which enacted this chapter, derived, see 1994 Senate Journal 2505-2508.

#### ARTICLE 1. SCOPE; SERVICES; OPERATIONS

##### Section

05. Purpose

10. Applicability

20. Health-related services allowed in assisted living homes

30. Advance payments

40. Residents money

50. Temporary absence

60. House Rules

70. Resident file

80. Closure or relocation: change of mailing address

90. Rate increase

100. Criminal background check for employees

**AS 47.33.005. PURPOSE.** The purpose of this chapter is to:

(1) contribute to the development of a system of care by encouraging the establishment of assisted living homes that provide a homelike environment for elderly persons and persons with a mental or physical disability who need assistance with the activities of daily living;

(2) promote the establishment of homes that help

(A) the elderly to age in place; and

(B) adults with a physical or mental disability to become integrated into the community and to reach their highest level of functioning;

(3) establish standards that will protect residents of assisted living homes, while at the same time promoting an environment that will encourage resident growth and independence, without discouraging the establishment and continued operation of those homes;

(4) require that a resident of an assisted living home have an assisted living plan that identifies the services that will be used to meet the resident's reasonable wants and needs; and

(5) provide a resident of an assisted living home, or the resident's representative, with the opportunity to participate to the fullest extent possible in the design and implementation of the resident's assisted living plan and in any decisions involving the resident's care.

**AS.47.33.010.APPLICABILITY.** (a) Except as provided in (b) of this section, this chapter applies to assisted living homes, as defined in AS 47.32.900

(b) Notwithstanding (a) of this section, this chapter does not apply to

(1) a correctional facility;

(2) a facility for treatment of alcoholism that is regulated under AS 47.37;

(3) an emergency shelter;

(4) a medical facility, including a nursing home, licensed under AS 47.32;

(5) a program for runaway minors licensed under AS 47.10; or

(6) a maternity home licensed under AS 47.32.

**Effect of amendments-** The 1996 amendment, effective September 10, 1996, made a section reference substitution in paragraph (b)(5)a

**AS 47.33.020. HEALTH-RELATED SERVICES ALLOWED IN ASSISTED LIVING HOMES.** (a) This chapter does not prohibit the resident of an assisted living home from self-administering the resident's own medications, unless the resident's assisted living plan specifically provides otherwise.

(b) An assisted living home may provide, obtain, or offer to provide or obtain the health-related services described in (c) - (i) of this section. A service under (c) - (i) of this section may only be provided or obtained in addition to, and as a supplemental service to, the long-term provision by the home to the resident of assistance with the activities of daily living or personal assistance.

(c) If self-administration of medications is included in a resident's assisted living plan, the assisted living home may supervise the resident's self-administration of medications, notwithstanding a limitation imposed by AS 08 or by a regulation adopted under AS 08. The supervision may be performed by any home staff person and may include

- (1) reminding a resident to take medication;
- (2) opening a medication container or prepackaged medication for a resident;
- (3) reading a medication label to a resident;
- (4) observing a resident while the resident takes medication;
- (5) checking a resident's self-administered dosage against the label of the medication container;
- (6) reassuring a resident that the resident is taking the dosage as prescribed; and
- (7) directing or guiding, at the request of the resident, the hand of a resident who is administering the resident's own medications.

(d) An assisted living home may provide intermittent nursing services to a resident who does not require 24-hour nursing services and supervision. Intermittent nursing services may be provided only by a nurse licensed under AS 08.68 or by a person to whom a nursing task has been delegated under (e) of this section.

(e) A person who is on the staff of an assisted living home and who is not a nurse licensed under AS 08.68 may perform a nursing task in that home if

- (1) the authority to perform that nursing task is delegated to that person by a nurse licensed under AS 08.68; and

- (2) that nursing task is specified in regulations adopted by the Board of Nursing as a task that may be delegated.

(f) A resident who needs skilled nursing care may, with the consent of the assisted living home, arrange for that care to be provided in the home by a nurse licensed under AS 08.68 if that arrangement does not interfere with the services provided to other residents.

(g) As part of a plan to avoid transfer of a resident from the home for medical reasons, the home may provide, through the services of a nurse who is licensed under AS 08.68, 24-hour skilled nursing care to the resident for not more than 45 consecutive days.

(h) If a resident has received 24-hour skilled nursing care for the 45-day limit set by (g) of this section, the resident or the resident's representative may elect to have the resident remain in the home without continuation of 24-hour skilled nursing care if the home agrees to retain the resident after

- (1) the home and either the resident or the resident's representatives have consulted with the resident's physician;

(2) the home and either the resident or the resident's representative have discussed the consequences and risks involved in the election to remain in the home; and

(3) the portion of the resident's assisted living plan that relates to health-related services has been revised to provide for the resident's health-related needs without the use of 24-hour skilled nursing care, and the revised plan has been reviewed by a registered nurse licensed under AS 08.68 or by the resident's attending physician.

(i) A terminally ill resident may remain in the home if (1) the home and either the resident or the resident's representative agree that the resident may remain in the home; and (2) the resident is under the care of a physician who certifies that the needs of the resident are being met in the home. The time limitation of (g) of this section does not apply in the case of a terminally ill resident.

**AS 47.33.030. ADVANCE PAYMENTS.** (a) An assisted living home may not require a resident or prospective resident of the home or a resident or prospective resident's representative, to make an advance payment to the home except as security for performance of the contract or as advance rent for the immediately following rental period as the rental period is defined in the contract. If a home requires a resident or prospective resident to make an advance payment for security or as advance rent,

(1) the home shall promptly deposit the money in a designated trust account in a financial institution, separate from other money and property of the home;

(2) the home may not represent on a financial statement that the advance payment money is part of the assets of the home;

(3) the advance payment money may be used only for the account of the resident;

(4) the home shall notify the resident or the resident's representative, in writing, of the name and address of the depository in which the advance payment money is being held; and

(5) the home shall provide to the resident or the resident's representative the terms and conditions under which the advance payment money may be withheld by the home.

(b) An assisted living home shall establish a written policy for the refund of unused advance payments in the event of termination of a residential services contract or death of a resident. The policy must provide that a resident is entitled to a prorated refund of the unused portion of an advance payment, less reasonable charges for damages to the home resulting from other than normal use. (§ 1 ch. 130 SLA 1994)

**AS 47.33.040. RESIDENTS' MONEY.** (a) Except for advance payments under AS 47.33.030, an assisted living home may not require a resident of the home to deposit with the home money that belongs to the resident. The provisions of (b) of this section do not apply to money that constitutes an advance payment under AS 47.33.030.

(b) An assisted living home may accept, for safekeeping and management, money that belongs to a resident. The home shall establish a written policy for the management of such money

and shall act in a fiduciary capacity with respect to that money, in accordance with regulations adopted by the licensing agency. A home is not required to accept money that belongs to a resident. (§ 1 ch. 130 SLA 1994)

**AS 47.33.050. TEMPORARY ABSENCE.** (a) An assisted living home may agree to reserve space for a resident of the home who is temporarily absent from the home and plans to return to the home. The absent resident, or the resident's representative, shall notify the home in writing if the resident's plan to return to the home changes.

(b) Until the assisted living home receives written notice that an absent resident does not intend to return to the home, the home may charge the resident an agreed-upon daily rate during the resident's absence from the home. (§ 1 ch. 130 SLA 1994)

**AS 47.33.060. HOUSE RULES.** (a) An assisted living home may establish house rules, subject to the limitations provided for under this chapter.

(b) An assisted living home shall give a copy of the house rules to a prospective resident or the prospective resident's representative before the prospective resident enters into a residential services contract with the home, and shall post the house rules in a conspicuous place in the home.

(c) House rules may address various issues, including

(1) times and frequency of use of the telephone;

(2) hours for viewing and volume for listening to television, radio, and other electronic equipment that could disturb other residents;

(3) visitors;

(4) movement of residents in and out of the home;

(5) use of personal property;

(6) use of tobacco and alcohol; and

(7) physical, verbal, or other abuse of other residents or staff.

(d) An assisted living home may not adopt a house rule that unreasonably restricts a right of a resident provided for under this chapter or under any other provision of law. (§ 1 ch. 130 SLA 1994)

**AS 47.33.070. RESIDENT FILES.** (a) An assisted living home shall maintain, for each resident of the home, a file that includes

(1) the name and birth date, and, if provided by the resident, the social security number of the resident;

(2) the name, address, and telephone number of the resident's closest relative, service coordinator, if any, and representative, if any;

(3) a statement of what actions, if any, the resident's representative is authorized to take on the resident's behalf;

(4) a copy of the resident's assisted living plan;

(5) a copy of the residential services contract between the home and the resident;

(6) a notice, as required under AS 47.33.030, regarding the depository in which the resident's advance payment money is being held;

(7) written acknowledgement by the resident or the resident's representative that the resident has received a copy of and has read, or has been read the

(A) resident's rights under AS 47.33.300;

(B) resident's right to pursue a grievance under AS 47.33.340;

(C) resident's right to protection from retaliation under AS 47.33.350;

(D) provisions of AS 47.32.160, regarding immunity; and

(E) home's house rules;

(8) an acknowledgement and agreement relating to home safekeeping and management of the resident's money, as required by AS 47.33.040;

(9) a copy of the resident's living will, if any; and

(10) a copy of a power of attorney or other written designation of an agent, representative, or surrogate by the resident.

(b) An assisted living home shall retain a resident's file for at least one year after the resident terminates residency at the home. (§ 1 ch. 130 SLA 1994)

**AS 47.33.080. CLOSURE OR RELOCATION; CHANGE OF MAILING ADDRESS.**

(a) Not later than 90 days before the voluntary closing or relocation of an assisted living home, the home shall provide written notice of the closure or relocation to the licensing agency, each resident of the home, all representatives of residents, and all service coordinators for residents.

(b) Not later than 14 days before a change of an assisted living home's mailing address, the home shall provide written notice of the change to the licensing agency, each resident of the home, all representatives of residents, and all service coordinators for residents. (§ 1 ch. 130 SLA 1994)

**AS 47.33.090. RATE INCREASE.** An assisted living home may not increase the rate charged for services provided by the home unless the home notifies each resident or the resident's



representative of the increase at least 30 days before the increase is to take effect. (§ 1 ch. 130 SLA 1994)

**AS 47.33.100. Criminal background check for employees.** Effective dates-Section 2, ch. 35, SLA 1996, which enacted this section, took effect on August 20, 1996. Repealed (7/1/2005)

## **ARTICLE 2. RESIDENCY; ASSISTED LIVING PLANS**

### **Section**

- 200. Commencement of residency
- 210. Residential services contracts
- 220. Assisted living plan required
- 230. Assisted living plan contents; distributions
- 240. Evaluation of assisted living plan

**AS 47.33.200. COMMENCEMENT OF RESIDENCY.** A person may not begin to reside in an assisted living home without that person's consent, or, if the person is not competent, the consent of the person's representative (§ 1 ch. 130 SLA 1994)

**AS 47.33.210. RESIDENTIAL SERVICES CONTRACTS.** (a) A person may not begin residency in an assisted living home unless a representative of the home and either the person or the person's representative signs a residential service contract that complies with the provisions of this section. Upon signing of the contract, the home shall give the resident and the resident's representative, if any, a copy of the contract and place a copy of the contract in the resident's file

(b) A residential services contract must

(1) specifically describe the services and accommodations to be provided by the assisted living home;

(2) set out the rates charged by the home;

(3) specifically describe the rights, duties, and obligations of the resident, other than those specified in this chapter;

(4) set out the policies and procedures for termination of the contract as provided for in this chapter;

(5) state the amount and purpose of any advance payments required by the home;  
and

(6) set out the home's policy for refund of advance payments in the event of termination of the contract or death of the resident. (§ 1 ch. 130 SLA 1994)

**AS 47.33.220. ASSISTED LIVING PLAN REQUIRED.** An assisted living home shall ensure that an assisted living plan for a resident of the home is developed, and approved by the resident or the resident's representative, within 30 days after the resident was admitted to the home.

The assisted living plan must be developed by the resident or the resident's representative with participation from

- (1) the resident's service coordinator, if any;
- (2) representatives of providers of services to the resident; and
- (3) the administrator of the home (§ 1 ch. 130 SLA 1994)

**AS 47.33.230. ASSISTED LIVING PLAN CONTENTS; DISTRIBUTION.** (a) An assisted living plan for a resident of an assisted living home must

(1) promote the resident's participation in the community and increased independence through training and support, in order to provide the resident with an environment suited to the resident's needs and best interests;

(2) recognize the responsibility and right of the resident or the resident's representative to evaluate and choose, after discussion with all relevant parties, including the home, the risks associated with each option when making decisions pertaining to the resident's abilities, preferences, and service needs; and

(3) recognize the right of the home to evaluate and to either consent or refuse to accept the resident's choice of risks under (2) of this subsection.

(b) An assisted living plan for a resident must identify and describe

(1) the resident's specific strengths and limitations in performing the activities of daily living;

(2) any physical disabilities and impairments, and the aspects of the resident's medical condition, general health, emotional health, mental health, or other conditions or problems that are relevant to the services needed by the resident;

(3) the resident's preference in roommates, living environment, food, recreational activities, religious affiliation, and relationships and visitation with friends, family members, and others;

(4) specific activities of daily living with which the resident needs assistance;

(5) how assistance with the activities of daily living will be provided or arranged for by the home or the resident;

(6) the frequency of the resident's training for independent living, if habilitation is part of the plan;

(7) the resident's need for personal assistance and how those needs will be met by home staff or another service provider from the community;

(8) the resident's need for health-related services and how that need will be met;

(9) the resident's reasonable wants and the services that will be used to meet those wants.

(c) If the assisted living home provides or arranges for the provision of health-related services to a resident, the home shall ensure that a

(1) registered nurse licensed under AS 08.68 reviews the portion of an assisted living plan that describes how the resident's need for health-related services will be met; and

(2) physician's statement about the resident is included in the plan.

(d) A resident's assisted living plan must be in writing, in language that can be understood by the resident.

(e) If a person's reasonable wants and needs can be met by a particular assisted living home and a decision is made to enter into a residential services contract between the person and the home, the resident's assisted living plan shall be approved, dated, and signed by the administrator of that home and either the resident or the resident's representative.

(f) The assisted living plan shall be retained by the home in the resident's file. The home shall provide a copy of the plan to the resident and to the resident's representative if any. (§ 1 ch. 130 SLA 1994)

**AS 47.33.240. EVALUATION OF ASSISTED LIVING PLAN.** (a) An assisted living home resident or the resident's representative, and the home administrator or the administrator's designee, shall evaluate the resident's assisted living plan, determine whether the plan is meeting the resident's reasonable wants and needs, and revise the plan if necessary. At the request of the resident or the resident's representative, the resident's service coordinator, if any, and family members may participate in the evaluation. If the assisted living home provides or arranges for the provision of health-related services to a resident, the resident's evaluation shall be done at three-month intervals. If the assisted living home does not provide or arrange to provide health-related services to a resident, the resident's evaluation shall be done at least at one-year intervals.

(b) The administrator or the administrator's designee shall

(1) document the results of the evaluation in the resident's record;

(2) sign and date any revisions to the resident's assisted living plan;

(3) place a copy of the revisions in the resident's file; and

(4) provide the resident and the resident's representative, if any, with a copy of the revisions. (§ 1 ch. 130 SLA 1994)

### ARTICLE 3. RESIDENT'S RIGHTS

#### Section

- 300. Resident's Rights
- 310. Notice of Rights
- 320. Access to assisted living home
- 330. Prohibitions
- 340. Resident grievance procedure
- 350. Retaliation against home resident
- 360. Involuntary termination of contract

**AS 47.33.300. RESIDENTS' RIGHTS.** (a) Subject to (c) of this section, a resident of an assisted living home has the right to

- (1) live in a safe and sanitary environment;
- (2) be treated with consideration and respect for personal dignity, individuality, and the need for privacy, including privacy in
  - (A) a medical examination or health-related consultation;
  - (B) the resident's room or portion of a room;
  - (C) bathing and toileting, except for any assistance in those activities that is specified in the resident's assisted living plan; and
  - (D) the maintenance of personal possessions and the right to keep at least one cabinet or drawer locked;
- (3) possess and use personal clothing and other personal property, unless the home can demonstrate that the possession or use of certain personal property would be unsafe or an infringement of the rights of other residents;
- (4) engage in private communications, including
  - (A) receiving and sending unopened correspondence;
  - (B) having access to a telephone, or having a private telephone at the resident's own expense; and
  - (C) visiting with persons of the resident's choice, subject to visiting hours established by the home;
- (5) close the door of the resident's room at any time, including during visits in the room with guests or other residents;

(6) at the resident's own expense unless otherwise provided in the residential services contract, participate in and benefit from community services and activities to achieve the highest possible level of independence, autonomy, and interaction with the community;

(7) manage the resident's own money;

(8) participate in the development of the resident's assisted living plan;

(9) share a room with a spouse if both are residents of the home;

(10) have a reasonable opportunity to exercise and to go outdoors at regular and frequent intervals, when weather permits;

(11) exercise civil and religious liberties;

(12) have access to adequate and appropriate health care and health care providers of the resident's own choosing, consistent with established and recognized standards within the community;

(13) self-administer the resident's own medications, unless specifically provided otherwise in the resident's assisted living plan;

(14) receive meals that are consistent with religious or health related restrictions;

(15) receive the prior notice of relocation of the home or the home's intent to terminate the residential services contract of the resident required by AS 47.33.080 and 47.33.360, respectively;

(16) present to the home grievances and recommendations for change in the policies, procedures, or services of the home;

(17) at the resident's own expense unless otherwise provided in the residential services contract, have access to and participate in advocacy or special interest groups;

(18) at the resident's own expense unless otherwise provided in the residential services contract, intervene or participate in, or refrain from participating in, adjudicatory proceedings held under this chapter, unless provided otherwise by other law; and

(19) reasonable access to home files relating to the resident, subject to the constitutional right of privacy of other residents of the home.

(b) An assisted living home may not establish or apply a policy, procedure, or rule that is inconsistent with or contrary to a right provided by this section or by other law.

(c) The rights set out in (a)(3), (4), (7), (12), and (14) of this section do not create an obligation for an assisted living home to expend money for the specified rights unless otherwise provided in the residential services contract. (§ 1 ch. 130 SLA 1994)

**AS 47.33.310. NOTICE OF RIGHTS.** (a) At the time a person begins residency in an assisted living home, the home shall provide the resident and the resident's representative, if any, with a copy of the rights set out in AS 47.33.300. The home shall obtain from the resident or the resident's representative a signed and dated acknowledgement stating that the resident has read or been read the rights, understands the rights, and has had any questions about the rights answered by the home.

(b) An assisted living home shall post in a prominent place in the home

(1) a copy of the rights set out in AS.33.300

(2) the name, address and phone number of the long term care ombudsman hired under AS 44.21.231 and, if relevant to residents, of the advocacy agency for persons with a developmental disability or mental illness:

(3) the telephone number of an information or referral service for vulnerable adults; and

(4) a copy of the grievance procedure established under AS 47.33.340.

( 1 ch. 130 SLA 1994)

**AS 47.33.320. ACCESS TO ASSISTED LIVING HOME.** An assisted living home shall allow advocates and the representatives of community legal services programs access to the home at reasonable times to, subject to the resident's consent,

(1) visit with a resident of the home and make personal, social, and legal services available to the resident;

(2) distribute educational and informational materials to advise a resident or resident's representative of applicable rights; and

(3) assist a resident or a resident's representative in asserting legal rights or claims.  
(§ 1 ch. 130 SLA 1994)

**AS 47.33.330. PROHIBITIONS.** (a) An assisted living home, including staff of the home, may not

(1) deprive a resident of the home of the rights, benefits, or privileges guaranteed to the resident by law;

(2) enter a resident's room without first obtaining permission, except

(A) during regular, previously announced, fire, sanitation, or other licensing inspections;

(B) when a condition or situation presents an imminent danger;

(C) as required by the resident's assisted living plan to provide services specified in the residential services contract; or

(D) for other vital health or safety reasons;

(3) impose religious beliefs or practices upon a resident or require a resident to attend religious services;

(4) place a resident under physical restraint unless the resident's own actions present an imminent danger to the resident or others;

(5) place a resident under chemical restraint; this paragraph does not prevent a resident from voluntarily taking tranquilizers, or other medication, prescribed by a licensed physician;

(6) compel a resident to perform services for the home, except as contracted for by the resident and the home or as provided for in the resident's assisted living plan; or

(7) restrain, interfere with, coerce, discriminate against, or retaliate against a resident for asserting a right specified by this chapter or by other law.

(b) An assisted living home may not physically restrain a resident unless the home has a written physical restraint procedure that has been approved by the licensing agency. The home shall terminate the physical restraint as soon as the resident no longer presents an imminent danger.

(c) An owner, administrator, employee, or agent of an assisted living home may not act as a representative of a resident. (§ 1 ch. 130 SLA 1994)

**AS 47.33.340. RESIDENT GRIEVANCE PROCEDURE.** (a) An assisted living home shall establish a written grievance procedure for handling complaints of residents of the home. At the time a person begins residency in an assisted living home, the home shall give a copy of the grievance procedure to the resident and the resident's representative, if any.

(b) The grievance procedure established under this section must provide that a resident and the resident's representative have the right to

(1) present both a written and an oral explanation of the resident's grievance;

(2) have an advocate of the resident's choice, and the resident's representative, if any, attend meetings concerning the resident's grievance; and

(3) be notified in writing, within 30 days after the filing of the grievance, of the final decision of the home regarding the grievance. (§ 1 ch. 130 SLA 1994)

**AS 47.33.350. RETALIATION AGAINST HOME RESIDENT.** (a) An assisted living home may not take retaliatory action against a resident of that home if the resident or the resident's representative

(1) exercises a right provided by this chapter or by other law;

(2) appears as a witness, or refuses to appear as a witness, in an adjudicatory proceeding regarding the home;

(3) files a civil action alleging a violation of this chapter; or

(4) claims a violation of this chapter before a state or federal agency having jurisdiction over the home or its employees.

(b) Termination of a resident's residential services contract by an assisted living home within 60 days after the resident engages in an activity described in (a) of this section creates a rebuttable presumption that the termination was retaliatory.

(c) At the time, or before, a person begins residency in an assisted living home, the home shall give the resident and the resident's representative, if any, written notice of the protection from retaliation provided under this section. (§ 1 ch. 130 SLA 1994)

**AS 47.33.360. INVOLUNTARY TERMINATION OF CONTRACT.** (a) An assisted living home may not terminate a residential services contract with a resident of the home against the resident's will, except

(1) for medical reasons;

(2) for engaging in a documented pattern of conduct that is harmful to the resident, other residents, or staff of the home;

(3) for violation of the terms of the residential services contract, including failure to pay costs incurred under the contract;

(4) when emergency transfer out of the home is ordered by the resident's physician;

(5) when the home is closing; or

(6) when the home can no longer provide or arrange for services in accordance with the resident's needs and the resident's assisted living plan.

(b) At least 30 days before terminating the residential services contract with a resident under (a)(2), (3), (5), or (6) of this section, the assisted living home shall provide written notice of the proposed contract termination to the resident or the resident's representative and to the resident's service coordinator if any. The notice must state the

(1) basis for the termination; and

(2) resident's right to contest the termination in the manner provided in the contract, which must include an offer by the home to participate in a case conference as described in (c) of this section.



(c) Before terminating the residential services contract with a resident under (a)(2), (3), (5), or (6) of this section, the assisted living home shall participate in a case conference if requested by the resident or the resident's representative. The case conference must include the resident, the resident's representative, if any, the resident's advocate, if any, the resident's service coordinator, if any, the home administrator, and appropriate care providers who may discuss the appropriateness of the contract termination.

(d) If a home terminates the residential services contract with a resident under this section, the home shall cooperate with the resident, the resident's service coordinator, if any, and the resident's representative, if any, in making arrangements to relocate the resident. (§ 1 ch. 130 SLA 1994)

## **ARTICLE 4. LICENSING**

### **Section**

- 400. License required
- 410. Licensing agency
- 420. Standard forms
- 430. Authority of state agencies to impose additional requirements

**AS 47.33.400. LICENSE REQUIRED.** (§ 1ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.410. LICENSING AGENCY.** (§ 1ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.420. STANDARD FORMS.** The Department of Health and Social Services and the Department of Administration shall cooperatively develop standard forms that assisted living homes may use to comply with the requirements of this chapter. (§ 1 ch. 130 SLA 1994)

**AS 47.33.430. AUTHORITY OF STATE AGENCIES TO IMPOSE ADDITIONAL REQUIREMENTS.** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

## **ARTICLE 5. ENFORCEMENT**

### **Section**

- 500. Complaint
- 510. Immunity
- 520. Investigation
- 530. Notice of violation
- 540. Report of compliance
- 550. Administrative sanctions
- 560. Administrative procedures
- 570. Criminal penalty

**AS 47.33.500. COMPLAINT.** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.510. IMMUNITY.** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.520. INVESTIGATION.** (§ 1 ch. 130 SLA 1994; am § 16 ch. 98, SLA 1998; am § 4 ch. 99, SLA 1999) Effect of amendments- The 1998 amendment added (f). The 1999 amendment changed the wording of (e)(1) and added (e)(2). ) Repealed (7/1/2005)

**AS 47.33.530. NOTICE OF VIOLATION.** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.540. REPORT OF COMPLIANCE.** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.550. ADMINISTRATIVE SANCTIONS** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.560. ADMINISTRATIVE PROCEDURES** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.570. CRIMINAL PENALTY** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

## **ARTICLE 6. GENERAL PROVISIONS**

### **Section**

910. Fees

920. Regulations

930. Definitions

**AS 47.33.910. FEES.** (§ 1 ch. 130 SLA 1994) Repealed (7/1/2005)

**AS 47.33.920. REGULATIONS.** (§ 1 ch. 130 SLA 1994; am § 3 ch. 35 SLA 1996) Effect of amendments- The 1996 amendment, effective August 20, 1996, added an exception at the end of the section. Repealed (7/1/2005)

**AS 47.33.990. DEFINITIONS.** In this chapter,

(1) "activities of daily living" means walking, eating, dressing, bathing, toileting, and transfer between a bed and a chair;

(2) "administrator" means a person who has general administrative charge and oversight of an assisted living home;

(3) "adult" means a person 18 years of age or older who is not a ward of the state under AS 47.10.080;

(4) "advocate" means a public or private officer, agency, or organization designated by federal or state statute, or a state plan developed under a federal or state statute, to represent the interests of and speak on behalf of a resident of an assisted living home;

(5) "aging in place" means choosing to remain in a familiar living environment and manage the risks associated with the physical or mental decline that can occur with increasing age;

(6) "assisted living home," means a residential facility to which this chapter applies, as described in AS 47.33.010;

(7) "assisted living plan" means a written description of

(A) a person's functional capabilities;

(B) the person's needs and preferences for assistance with the activities of daily living; and

(C) the services to be provided to meet the person's reasonable wants and needs;

(8) Repealed (7/1/2005)

(9) "health-related services" means services described in AS 47.33.020(c) - (i);

(10) "home" means an assisted living home;

(11) Repealed (7/1/2005)

(12) "imminent danger" means a danger that could reasonably be expected to cause death or serious physical harm to the resident's self, to the staff of a home, or to others;

(13) "instrumental activities of daily living" means doing laundry, cleaning of living areas, food preparation, managing money and conducting business affairs, using public transportation, writing letters, obtaining appointments, using the telephone, and engaging in recreational or leisure activities;

(14) Repealed (7/1/2005)

(15) "personal assistance" means the provision by an assisted living home of one or more of the following personal services to a resident of the home:

(A) assisting a resident in obtaining supportive services as provided for in the resident's assisted living plan;

(B) assisting a resident in obtaining instrumental activities of daily living, as provided for in the resident's assisted living plan;

(C) being aware of a resident's general whereabouts while the resident is traveling independently in the community;

(D) monitoring a resident's activities while on the home premises to provide for the resident's and others' safety and well being;

(16) "person with a developmental disability" has the meaning given in AS 47.80.900;

(17) "physician's statement" means a written statement by a person's primary physician that includes a

(A) medical history and physical, not older than six months, of the person;

(B) listing of the person's complete current medicine regimen; and

(C) statement of current therapy regimen necessary to maintain or increase the person's functioning, mobility, or independence;

(18) "resident" means an adult who has signed a residential service contract with and resides in an assisted living home;

(19) "representative" means a guardian, conservator, attorney in fact, or other person designated by a court, or in writing by a legally competent person, to act on behalf of that person;

(20) "service coordinator" means a person who is responsible for

(A) coordinating the services of community agencies that provide services to a resident of an assisted living home;

(B) participating in inter-agency case management for a resident; or

(C) planning for the placement of a person in an assisted living home;

(21) "supportive services" means recreational and leisure activities, transportation, social services, legal services, financial management services, educational and vocational services, medical, dental, and other health care services, habilitation or rehabilitation services, respite services, case management, day care, and other services required to meet a resident's needs;

(22) "terminally ill resident" means an ill resident who has a medical prognosis, certified in writing by the resident's attending physician, that the life expectancy of the resident is no more than six months if the illness runs its normal course. (§ 1ch. 130 SLA 1994; am§ 50 ch. 59 SLA 1996)

**Effect of amendments-**The 1996 amendments, effective September 10, 1996, made section reference substitutions in paragraph (3).

# ALASKA STATUTE

## Chapter 47.32

### CENTRALIZED LICENSING AND RELATED ADMINISTRATIVE PROCEDURES

#### **Sec. 47.32.010. Purpose and applicability.**

(a) The purpose of this chapter is to establish centralized licensing and related administrative procedures for the delivery of services in this state by the entities listed in (b) of this section. These procedures are intended to promote safe and appropriate services by setting standards for licensure that will reduce predictable risk; improve quality of care; foster individual and patient rights; and otherwise advance public health, safety, and welfare.

(b) This chapter and regulations adopted under this chapter apply to the following entities:

- (1) ambulatory surgical centers;
- (2) assisted living homes;
- (3) child care facilities;
- (4) child placement agencies;
- (5) foster homes;
- (6) free-standing birth centers;
- (7) home health agencies;
- (8) hospices, or agencies providing hospice services or operating hospice programs;
- (9) hospitals;
- (10) intermediate care facilities for the mentally retarded;
- (11) maternity homes;
- (12) nursing facilities;
- (13) residential child care facilities;
- (14) residential psychiatric treatment centers;
- (15) rural health clinics;
- (16) runaway shelters.

(c) [See delayed effective date note]. The provisions of AS 47.05.300 - 47.05.390, regarding criminal history, criminal history checks, criminal history use standards, and a centralized registry, apply to entities listed in (b) of this section, as provided in AS 47.05.300.

#### **Sec. 47.32.020. Requirement to obtain a license.**

(a) An entity may not operate a facility described in AS 47.32.010(b) without first obtaining a license under this chapter unless the entity is exempt under regulations adopted under AS 47.32.030.

(b) If an entity encompasses more than one type of activity listed in AS 47.32.010(b), the entity shall apply for and receive a separate license under this chapter before operating that type of activity unless exempt under regulations adopted under AS 47.32.030.

#### **Sec. 47.32.030. Powers of the department; delegation to municipality.**

(a) The department may

(1) administer and enforce the provisions of this chapter;

(2) coordinate and develop policies, programs, and planning related to licensure and operation of entities listed in AS 47.32.010(b) as defined by regulation;

(3) adopt regulations necessary to carry out the purposes of this chapter, including regulations that

(A) establish fees for licensing of each type of entity listed in AS 47.32.010(b);

(B) impose requirements for licensure, including standards for license renewal, that are in addition to the requirements of this chapter or of any other applicable state or federal statute or regulation;

(C) impose requirements and standards on licensed entities that are in addition to those imposed by this chapter or by any other applicable state or federal statute or regulation, including

(i) requirements and standards necessary for an entity or the state to receive money from the department from any source, including federal money;

(ii) record-keeping requirements;

(iii) reporting requirements; and

(iv) requirements and standards regarding health, safety, and sanitation;

(D) provide for waivers, variances, and exemptions from the requirements of this chapter, including the requirement to obtain a license, if the department finds it necessary for the efficient administration of this chapter; and

(E) establish requirements for the operation of entities licensed under this chapter;

(4) investigate

(A) entities described in AS 47.32.010(b);

(B) applicants for licensure, including individuals named in an application; and

(C) other persons that the department has reason to believe are operating an entity required to be licensed under this chapter, or are residing or working in an entity for which licensure has been sought under this chapter; this subparagraph does not apply to persons receiving services from an entity for which licensure has been sought under this chapter;

(5) inspect and monitor licensed entities for compliance with this chapter, regulations adopted under this chapter, and any other applicable statutes or regulations;

(6) enter into contracts and agreements necessary to carry out the functions, powers, and duties of the department under this chapter;

(7) enter into agreements with private entities, municipalities, and individuals to investigate and make recommendations to the department regarding the licensure and monitoring of entities under this chapter;

(8) require an individual who is or will be operating an entity to complete training related to the operation of the entity;

(9) waive the application requirements for an entity seeking licensure if the entity submits documentation verifying that it

(A) has a license issued by an organization or other agency that has licensing authority under state or federal law if the standards for that licensure are approved by the department under this chapter or regulations adopted under this chapter;

(B) has accreditation from a nationally recognized organization if the standards for that accreditation are equal to or more stringent than the standards for licensure under this chapter or regulations adopted under this chapter; or

(C) is an entity that federal law does not require to be licensed.

(b) The department shall delegate the department's authority to regulate child care facilities to a municipality that has adopted an ordinance providing for child care licensing under home rule powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. The department shall make the delegation described in this subsection within 90 days after receiving a written request from the municipality to delegate the authority. A municipality receiving a delegation under this subsection may adopt additional requirements for child care facilities operating within the boundaries of the municipality if the requirements meet or exceed the requirements under state law.

(c) The issuance of a license by the department does not obligate the department to place or maintain an individual in an entity or through an entity, or to provide financial support to an entity.

**Sec. 47.32.040. Application for license.**

A person shall apply to the department for a license under this chapter. The application must be made to the department on a form provided by the department or in a format approved by the department, and must be accompanied by

(1) any fee established by regulation; and

(2) documents and information required by regulation.

**Sec. 47.32.050. Provisional license; biennial license.**

(a) The department may issue a provisional license to an entity for which application is made under AS 47.32.040 if, after inspection and investigation, the department determines that the application and the entity meet the requirements of this chapter, regulations adopted under this chapter, and any other applicable statutes or regulations. A provisional license is valid for a period not to exceed one year, except that the department may extend a provisional license for one additional period not to exceed one year.

(b) Before expiration of a provisional license issued under (a) of this section, the department shall inspect and investigate the entity to determine whether the entity is operating in compliance with this chapter, regulations adopted under this chapter, and any other applicable statutes or regulations. After inspection and investigation under this subsection and before expiration of a provisional license, the department shall issue a biennial license for the entity if the department finds that

(1) the entity meets the requirements for biennial licensure established in this chapter, regulations adopted under this chapter, and other applicable statutes and regulations;

(2) a ground for nonrenewal of a license does not exist; and

(3) any applicable fee has been paid.

(c) The department may place one or more conditions on a provisional or biennial license issued under this section in order to further the purposes of this chapter.

**Sec. 47.32.060. License renewal.**

(a) At least 90 days before expiration of a biennial license, a licensed entity that intends to remain licensed shall submit an application for renewal of the license on a form provided by the department or in a format approved by the department, accompanied by

(1) all documents and information identified in regulation as being required for renewal of the license; and

(2) any fee established by regulation.

(b) Before expiration of a biennial license, the department or its representative may inspect an entity that is the subject of a renewal application to determine whether the entity is operating in compliance with this chapter, regulations adopted under this chapter, and other applicable statutes or regulations. After any inspection and investigation under this subsection and before expiration of the biennial license, the department shall renew a biennial license if the department finds that

(1) the licensed entity meets the requirements for renewal;

(2) a ground for nonrenewal of a license does not exist; and

(3) any applicable fee has been paid.



(c) If an application for renewal of a license is submitted but the department is unable to complete its review of the application before the expiration of the biennial license, the license is automatically extended for six months or until the department completes its review and either approves or denies the application, whichever occurs earlier.

(d) The department may place one or more conditions on a renewed license issued under this section to further the purposes of this section.

(e) The department shall adopt regulations establishing the grounds for nonrenewal of a license for purposes of AS 47.32.050 and this section.

**Sec. 47.32.070. Denial of or conditions on license.**

(a) If the department denies an application for or places conditions on a provisional or biennial license or license renewal, the department shall provide the applicant or entity with a notice of the action by certified mail. The notice must contain a written statement of the reason for the action and information about requesting a hearing under (b) of this section.

(b) An applicant or entity that receives a notice of action under (a) of this section may appeal the department's decision by requesting a hearing within 15 days after receipt of the notice. The appeal must be on a form provided by the department or in a format approved by the department.

**Sec. 47.32.080. Posting of license; license not transferable.**

(a) A license issued under this chapter shall be posted in a conspicuous place on the licensed premises. Any notice of a variance issued by the department shall be posted near the license.

(b) A license issued under this chapter is not transferable unless authorized by the department.

**Sec. 47.32.090. Complaints and investigation.**

(a) A person who believes that an entity has violated an applicable statute or regulation or a condition of a license issued under this chapter may file a verbal or written complaint with the department.

(b) The department may investigate a complaint filed under this section. The department may decline to investigate a complaint if the department reasonably concludes and documents that the complaint is without merit based on information available to the department at the time of the complaint. The department may consolidate complaints if the department concludes that a single investigation would further the efficient administration of this chapter.

(c) A licensed entity may not take retaliatory action against a person who files a complaint. Except as provided in AS 47.05.350 and AS 47.32.160, a complainant against whom a retaliatory action has been taken may recover treble damages in a civil action upon a showing that the action was taken in retaliation for the filing of a complaint.

**Sec. 47.32.100. Cooperation with investigation.**

An entity shall cooperate with an investigation initiated by the department. An investigated entity shall

(1) permit representatives of the department to inspect the entity; review records, including files of individuals who received services from the entity; interview staff; and interview individuals receiving services from the entity; and

(2) upon request, provide the department with information and documentation regarding compliance with applicable statutes and regulations.

**Sec. 47.32.110. Right of access and inspection.**

(a) A designated agent or employee of the department shall have right of access to an entity

(1) to determine whether an application for licensure or renewal is appropriate;

(2) to conduct a complaint investigation;

(3) to conduct a standard inspection;

(4) to inspect documents, including personnel records, accounts, the building, or the premises;

(5) to interview staff or residents; or

(6) if the department has reasonable cause to believe that the entity is operating in violation of this chapter or the regulations adopted under this chapter.

(b) If an entity denies access, the department may petition the court for an order permitting access, or the department may seek to revoke the entity's license under AS 47.32.140.

(c) Upon petition of the department and after a hearing held upon reasonable notice to the entity, the court shall issue an order to an officer or employee of the department authorizing the officer or employee to enter for any of the purposes described in (a) of this section.

**Sec. 47.32.120. Report.**

(a) Within 10 working days after completing an investigation or inspection under AS 47.32.090 - 47.32.110, the department shall prepare a report of the results of the investigation or inspection and mail a copy of the report to the entity. The report shall include a description of

(1) any violation, including a citation to each statute or regulation that has been violated; and

(2) any enforcement action the department intends to take under AS 47.32.130 or 47.32.140.

(b) An entity that receives a copy of a report under this section may submit a written response to the report to the department. The department may require an entity to submit a response to a report received under this section.

(c) Within 14 days after the entity receives a copy of the report under this section, upon request of the complainant, the department shall provide a copy of the report to the complainant.

**Sec. 47.32.130. Enforcement action: immediate revocation or suspension.**

(a) If the department's report of investigation or inspection under AS 47.32.120 concludes that the department has reasonable cause to believe that a violation of an applicable statute or regulation has occurred that presents an immediate danger to the health, safety, or welfare of an individual receiving services from the entity, the department, without an administrative hearing and without providing an opportunity to cure or correct the violation, may immediately revoke or suspend the entity's license or, if the entity is not licensed under this chapter, may revoke the entity's ability to become licensed under this chapter or to provide services as an entity exempted under this chapter. A suspension or revocation under this subsection takes effect immediately upon initial notice to the entity from the department, is in addition to any enforcement action under AS 47.32.140, and continues until a final determination under (c) of this section or AS 47.32.150.

(b) Notice under this section shall be provided as follows:

(1) the department shall provide initial notice to the entity at the time the department determines that an immediate suspension or revocation is required; initial notice may be oral, except that, if an entity representative is not present at the entity, the department shall post written notice on the front door of the entity; the initial notice must provide information regarding the entity's appeal rights;

(2) the department shall provide formal written notice to the entity within 14 working days after the immediate revocation or suspension decision; formal written notice must include

(A) a copy of the department's report under AS 47.32.120, a statement of the entity's right to submit a written response to the report, and any department requirement that the entity submit a written response to the report;

(B) a description of any enforcement action the department intends to take under AS 47.32.140(d) or (f); and

(C) information regarding the entity's appeal rights.

(c) An entity to which a notice has been provided under this section may appeal the department's decision to impose the enforcement action, including an enforcement action the department intends to take under AS 47.32.140(d) or (f), by filing a written request for a hearing, on a form provided by the department, within 15 days after receipt of the notice. If a hearing is not timely requested under this subsection, the department's notice constitutes a final administrative order for which the department may seek the court's assistance in enforcing.

**Sec. 47.32.140. Enforcement actions.**

(a) If the department's report of investigation or inspection under AS 47.32.120 concludes that the department has reasonable cause to believe that a violation of an applicable statute or regulation has occurred, the department shall provide notice to the entity of the violation and an

opportunity to cure the violation within a reasonable time specified by the department. The notice must include a copy of the department's report under AS 47.32.120, a statement that the entity may submit a written response to the report, any department requirement that the entity submit a written response to the report, a description of any enforcement action the department intends to take under (d) or (f) of this section, and information regarding the entity's appeal rights.

(b) An entity receiving a notice under (a) of this section, or a notice under AS 47.32.130(b)(2) that contains the information specified in AS 47.32.130(b)(2)(B), shall submit a plan of correction to the department for approval. Once it has cured its violations, the entity shall submit to the department an allegation of compliance. Upon receipt of the allegation of compliance, the department may conduct a follow-up investigation or inspection to determine compliance. The department may take one or more enforcement actions under (d) and (f) of this section regardless of whether the entity achieves compliance under this subsection.

(c) If the department believes that an entity has not voluntarily corrected the violation or entered into a plan of correction with the approval of the department, the department may require that the entity participate in a plan of correction under regulations of the department. Once the entity has cured its violations, it shall submit to the department an allegation of compliance. Upon receipt of the allegation of compliance, the department may conduct a follow-up investigation or inspection to determine compliance. The department may take one or more enforcement actions under (d) and (f) of this section regardless of whether the entity achieves compliance under this subsection.

(d) The department may take one or more of the following enforcement actions under this section:

(1) delivery of a warning notice to the licensed entity and to any additional person who was the subject of the investigation or inspection;

(2) modification of the term or scope of the entity's existing license, including changing a biennial license to a provisional license or adding a condition to the license;

(3) suspension of the entity's operations for a period of time set by the department;

(4) suspension of or a ban on the entity's provision of services to individuals not already receiving services from the entity for a period of time set by the department;

(5) nonrenewal of the entity's license;

(6) revocation of the entity's license or, if the entity is not licensed under this chapter, revocation of the entity's ability to become licensed under this chapter;

(7) issuance of an order requiring closure, immediate or otherwise, of the entity regardless of whether the entity is licensed or unlicensed;

(8) denial of payments under AS 47.07 for the entity's provision of services to an individual not already receiving services from the entity;

(9) assumption of either temporary or permanent management of the entity or pursuit of a court-ordered receiver for the entity;

(10) reduction of the number of individuals receiving services from the entity under the license;

(11) imposition of a penalty authorized under law;

(12) inclusion in the registry established under AS 47.05.330;

(13) requirement that the entity prepare and submit a plan of correction.

(e) The department may not take action under (d)(9) of this section unless the commissioner has reasonable cause to believe that continued management by the entity while the entity is attempting to cure a violation would be injurious to the health, safety, or welfare of an individual who is receiving a service from the entity.

(f) In addition to any other enforcement actions the department may take under this section, the department may assess a civil fine against an entity for a violation of an applicable statute or regulation, taking into account the type and size of the entity and the type and severity of the violation. A fine assessed under this subsection may not exceed \$2,500 a day for each day of violation for a continuing violation or \$25,000 for a single violation.

(g) An entity to which a notice has been provided under this section regarding an enforcement action under (d) or (f) of this section may appeal the department's decision to impose the enforcement action by filing a written request for a hearing, on a form provided by the department, within 15 days after receipt of the notice of the enforcement action.

(h) An enforcement action under (d) or (f) of this section may not be imposed until

(1) the time period for requesting a hearing under AS 47.32.130(c) or under (g) of this section, as applicable, has passed without a hearing being requested; or

(2) a final agency decision has been issued following a hearing requested under AS 47.32.130(c) or under (g) of this section, as applicable.

(i) If a hearing is not timely requested under AS 47.32.130(c) or under (g) of this section, as applicable, the department's notice regarding an enforcement action under (d) or (f) of this section constitutes a final administrative order. The department may seek the court's assistance in enforcing the final administrative order.

(j) An entity against which an enforcement action under (d) or (f) of this section has been taken may not apply for a license or license renewal until after the time period set by the department in its final administrative order under AS 47.32.130(c), this section, or AS 47.32.150, as applicable. If a time period has not been set, a final administrative order against the entity has the effect of a permanent revocation, and the entity may not apply for a license or license renewal. If the ownership, control, or management of an entity changes, the department may allow the entity to seek licensure if the entity submits documents showing the change.

(k) Assessment of a civil fine under this section does not preclude imposition of a criminal penalty under AS 47.32.170.

**Sec. 47.32.150. Hearings.**

(a) Upon receipt of a timely request for a hearing by an entity regarding an enforcement action under AS 47.32.130(a) or 47.32.140(d)(3), (5), (6), (7), or (9), the department shall request the chief administrative law judge appointed under AS 44.64.020 to appoint an administrative law judge employed or retained by the office of administrative hearings to preside over a hearing conducted under this section. AS 44.62.330 - 44.62.630 and AS 44.64.060 apply to the hearing.

(b) Upon receipt of a timely request for a hearing by an entity regarding an enforcement action under AS 47.32.070 or 47.32.140(d)(1), (2), (4), (8), (10), (11), (12), or (13), the department shall conduct a hearing in front of an officer appointed by the commissioner. A hearing under this subsection may be conducted on the record, in an informal manner, and may not be conducted under AS 44.62 or AS 44.64. The appointed hearing officer may be a state employee.

(c) The decision following a hearing conducted under (a) or (b) of this section constitutes a final agency administrative order.

(d) A hearing conducted under this section shall take place within 120 days after the department's receipt of the request for hearing. A hearing may be held on an expedited basis upon a showing of good cause. An expedited hearing shall be held within 60 days after the department's receipt of the request for a hearing.

**Sec. 47.32.160. Immunity.**

(a) The department, its employees, and its agents are not liable for civil damages as a result of an act or omission in the licensure process, the monitoring of a licensed entity, or any activities under this chapter.

(b) A volunteer who works for a hospice program licensed under this chapter is not liable for damages for personal injury, wrongful death, or property damage for an act or omission committed in the course of hospice-related duties unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.

**Sec. 47.32.170. Criminal penalty.**

A person who intentionally or with criminal negligence violates a provision of this chapter or a regulation adopted under this chapter related to the health and safety of persons served by an entity required to comply with this chapter is guilty of a class B misdemeanor.

**Sec. 47.32.180. Confidentiality; release of certain information.**

(a) Except as otherwise provided by law, the following are confidential and may not be disclosed to the public without a court order: complaints; investigations; inspections; records related to a complaint, investigation, or inspection; and the identity of a complainant and of individuals receiving services from an entity.

(b) With the exception of information that identifies a complainant or a recipient of services from an entity, a copy of the department's report of investigation or inspection under AS 47.32.120,

an entity's written response to the report, and information regarding any department imposition of an enforcement action under AS 47.32.130 or 47.32.140 are public records under AS 40.25. The department shall make this information available to the public for inspection and copying within timeframes specified in AS 40.25 or regulations adopted under AS 40.25 after the

(1) entity receives its copy of the report of investigation under AS 47.32.120, if the department has determined that an enforcement action under AS 47.32.130 or 47.32.140 will not be taken regarding the entity;

(2) department's notice of enforcement action under AS 47.32.130 or 47.32.140 becomes a final administrative order without a hearing under AS 47.32.130(c) or 47.32.140(i); or

(3) issuance of a decision following a hearing under AS 47.32.150.

**Sec. 47.32.190. Access to information.**

Notwithstanding any contrary provision of law, the divisions of the department assigned public health and public assistance functions shall have access to any information compiled or retained by other divisions within the department, regardless of the nature of the information or whether the information is considered confidential, in order to assist in administering the provisions of this chapter.

**Sec. 47.32.200. Notice of changes from an entity.**

(a) An entity shall provide the department with written notice of a change of mailing address at least 14 days before the effective date of the change.

(b) An entity shall notify the department within 24 hours after having knowledge that an administrator, employee, volunteer, or household member, as required by the type of entity under department regulations, has been

(1) convicted of, has been charged by information or complaint with, or is under indictment or presentment for an offense listed in regulations adopted under AS 47.05.310 or a law or ordinance of this or another jurisdiction with similar elements; or

(2) found to have neglected or abused a child as described in AS 47.10.

(c) An entity shall notify the department within 24 hours after having knowledge of any allegation or suspicion of abuse, neglect, or misappropriation of money or other property of an individual receiving services from the entity. The entity shall conduct an investigation and make a written report to the department within five days following notification to the department under this subsection.

(d) Not less than 20 days before the effective date of a decision to relinquish the entity's license, the entity shall notify the department of the decision.

(e) Not more than one day after signing a contract for sale of the licensed entity, the entity shall notify the department of the sale.

(f) Not less than 30 days before an entity wishes to change the location of the entity, the entity shall notify the department of the change.

**Sec. 47.32.900. Definitions.**

In this chapter,

(1) "ambulatory surgical center" means a facility that

(A) is not a part of a hospital or a physician's general medical practice; and

(B) operates primarily for the purpose of providing surgical services to patients who do not require hospitalization;

(2) "assisted living home"

(A) means a residential facility that serves three or more adults who are not related to the owner by blood or marriage, or that receives state or federal payment for services regardless of the number of adults served; the department shall consider a facility to be an assisted living home if the facility

(i) provides housing and food services to its residents;

(ii) offers to provide or obtain for its residents assistance with activities of daily living;

(iii) offers personal assistance as defined in AS 47.33.990; or

(iv) provides or offers any combination of these services;

(B) does not include

(i) a correctional facility;

(ii) an emergency shelter;

(iii) a program licensed under AS 47.10.310 for runaway minors;

(iv) a type of entity listed in AS 47.32.010(b)(5), (8), (9), (10), (11), or (12);

(3) "child placement agency" means an agency that arranges for placement of a child

(A) in a foster home, residential child care facility, or adoptive home; or

(B) for guardianship purposes;

(4) "commissioner" means the commissioner of health and social services;

(5) "department" means the Department of Health and Social Services;

(6) "entity" means an entity listed in AS 47.32.010(b);

(7) "foster home" means a place where the adult head of household provides 24-hour care on a continuing basis to one or more children who are apart from their parents;

(8) "free-standing birth center" means a facility that is not a part of a hospital and that provides a birth service to maternal clients;



(9) "frontier extended stay clinic" means a rural health clinic that is authorized to provide 24-hour care to one or more individuals;

(10) "home health agency" means a public agency or private organization, or a subdivision of a public agency or private organization, that primarily engages in providing skilled nursing services in combination with physical therapy, occupational therapy, speech therapy, or services provided by a home health aide to an individual in the individual's home, an assisted living home, or another residential setting; in this paragraph,

(A) "public agency" means an agency operated by the state or a local government;

(B) "subdivision" means a component of a multi-function facility or home health agency, such as the home health care division of a hospital or the division of a public agency, that independently meets the requirements for licensure as a home health agency;

(11) "hospice" or "agency providing hospice services or operating hospice programs" means a program that provides hospice services;

(12) "hospice services" means a range of interdisciplinary palliative and supportive services

(A) provided in a home or at an inpatient facility to persons who are terminally ill and to those persons' families in order to meet their physical, psychological, social, emotional, and spiritual needs; and

(B) based on hospice philosophy; for purposes of this subparagraph, "hospice philosophy" means a philosophy that is life affirming, recognizes dying as a normal process of living, focuses on maintaining the quality of remaining life, neither hastens nor postpones death, strengthens the client's role in making informed decisions about care, and stresses the delivery of services in the least restrictive setting possible and with the least amount of technology necessary by volunteers and professionals who are trained to help a client with the physical, social, psychological, spiritual, and emotional issues related to terminal illness so that the client can feel better prepared for the death that is to come;

(13) "hospital" means a public or private institution or establishment devoted primarily to providing diagnosis, treatment, or care over a continuous period of 24 hours each day for two or more unrelated individuals suffering from illness, physical or mental disease, injury or deformity, or any other condition for which medical or surgical services would be appropriate; "hospital" does not include a frontier extended stay clinic;

(14) "intermediate care facility for the mentally retarded" has the meaning given in 42 C.F.R. 440.150;

(15) "licensed entity" means an entity that has a license issued under this chapter;

(16) "maternity home" means a place of residence the primary function of which is to give care, with or without compensation, to pregnant individuals, regardless of age, or that provides care, as needed, to mothers and their newborn infants;

(17) "nursing facility" means a facility that is primarily engaged in providing skilled nursing care or rehabilitative services and related services for those who, because of their mental or physical condition, require care and services above the level of room and board; "nursing facility" does not include a facility that is primarily for the care and treatment of mental diseases;

(18) "residential child care facility" means a place, staffed by employees, where one or more children who are apart from their parents receive 24-hour care on a continuing basis;

(19) "residential psychiatric treatment center" means a secure or semi-secure facility, or an inpatient program in another facility, that provides, under the direction of a physician, psychiatric diagnostic, evaluation, and treatment services on a 24-hour-a-day basis to children with severe emotional or behavioral disorders;

(20) "runaway shelter" means a facility housing a runaway child;

(21) "rural health clinic"

(A) means a facility or clinic that is authorized to provide health care services and is located in a rural area;

(B) includes a frontier extended stay clinic;

(C) does not include a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

### Article 3. Criminal History; Registry

**Sec. 47.05.300. Applicability.** (a) The provisions of AS 47.05.310 - 47.05.390 apply to any individual or entity that is required by statute or regulation to be licensed or certified by the department or that is eligible to receive payments, in whole or in part, from the department to provide for the health, safety, and welfare of persons who are served by the programs administered by the department.

(b) Those individual service providers subject to AS 47.05.310 - 47.05.390 under (a) of this section include

- (1) public home care providers described in AS 47.05.017;
- (2) providers of home and community-based waiver services financed under AS 47.07.030(c); and
- (3) case managers to coordinate community mental health services under AS 47.30.530.

**Sec. 47.05.310. Criminal history; criminal history check; compliance.** (a) If an individual has been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation, that individual may not own an entity, or be an officer, director, partner, member, or principal of the business organization that owns an entity. In addition, an entity may not

- (1) allow that individual to operate the entity;
- (2) hire or retain that individual at the entity as an employee, independent contractor, or unsupervised volunteer of the entity;
- (3) allow that individual to reside in the entity if not a recipient of services; or
- (4) allow that individual to be present in the entity if the individual would have regular contact with individuals who receive services from the entity, unless that individual is a family member of or visitor of an individual who receives services from the entity.

(b) The department may not issue or renew a license or a certification for an entity that is in violation of (a) of this section or that would be in violation based on the information received as part of the application process.

(c) The department may not issue or renew a license or certification for an entity if an individual is applying for a license, license renewal, certification, or certification renewal for the entity and that

- (1) individual has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS

47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or

(2) individual's name appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

(d) An entity shall provide to the department a release of information authorization for a criminal history check for an individual who is not a recipient of services from the entity and, after the entity has been issued a license, license renewal, certification, or certification renewal by the department,

(1) who intends to become an owner of the entity, or an officer, director, partner, member, or principal of the business organization that owns the entity;

(2) whom the entity intends to hire or retain as the operator of the entity's business;

(3) whom the entity intends to hire or retain as an employee, independent contractor, or unsupervised volunteer of the entity; or

(4) who will be present in the entity or at the places of operation of entity, and would have regular contact with individuals who receive services from the, but who is not a family member or visitor of an individual who receives services from the entity.

(e) An individual for whom a release of information authorization has been provided to the department shall submit the individual's fingerprints to the department, with the fee established under AS 12.62.160, for a report of criminal justice information under AS 12.62 and for submission by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The Department of Public Safety shall provide the report of criminal justice information and the results of the national criminal history record check to the department for its use in considering an application for a license, license renewal, certification, or renewal, or in considering other approval or selection regarding an entity, for compliance with the standards established in this section. For purposes of obtaining access to criminal justice information maintained by the Department of Public Safety under AS 12.62, the department is a criminal justice agency conducting a criminal justice activity. The department may waive the requirement for fingerprint submission if an individual is unable to provide fingerprints due to a medical or physical condition that is documented by a licensed physician.

(f) The provisions of this section do not apply if the department grants an exception from a requirement of (a) - (e) of this section under a regulation adopted by the department.

(g) The department shall adopt regulations listing those criminal offenses that are inconsistent with the standards for licensure or certification by the department.

(h) An individual service provider is subject to the provisions of (a) - (g) of this section as if the individual service provider were an entity subject to those provisions.

(i) For purposes of (b) and (c) of this section, in place of nonissuance or nonrenewal of a license or certification, an entity or individual service provider that is not required to be licensed or certified by the department or a person wishing to become an entity or individual service provider that is not required to be licensed or certified by the department is instead ineligible to receive a payment, in whole or in part, from the department to provide for the health, safety, and welfare of persons who served by the programs administered by the department if the entity, individual service provider, or person

(1) is in violation of (a) of this section or would be in violation based on information received by the department as part of an application, approval, or selection process;

(2) has been found by a court or agency of this or another jurisdiction to have neglected, abused, or exploited a child or vulnerable adult under AS 47.10, AS 47.24, or AS 47.62 or a substantially similar provision in another jurisdiction, or to have committed medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction; or

(3) appears on the centralized registry established under AS 47.05.330 or a similar registry of this state or another jurisdiction.

**Sec. 47.05.320. Criminal history use standards.** The department shall by regulation establish standards for the consideration and use by the department, an entity, or an individual service provider of the criminal history of an individual obtained under AS 47.05.310.

**Sec. 47.05.330. Centralized registry.** (a) The department shall by regulation provide for a centralized registry to facilitate the licensing or certification of entities and individual service providers, the authorization of payments to entities or individual service providers by the department, and the employment of individuals by entities and individual service providers.

(b) Except for the name of each victim being redacted before the information is placed on the registry, the registry shall consist of the following information for an entity or individual service provider, an applicant on behalf of an entity or individual service provider, or an employee or unsupervised volunteer of an entity or individual service provider:

(1) decisions, orders, judgments, and adjudications finding that the applicant, employee, or unsupervised volunteer committed

(A) abuse, neglect, or exploitation under AS 47.10, AS 47.24, AS 47.62, or a substantially similar provision in another jurisdiction; or

(B) medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction;

(2) orders under a state statute or a substantially similar provision in another jurisdiction that a license or certification of the entity or individual service provider to provide services related to the health, safety, and welfare of persons was denied, suspended, revoked, or conditioned.

(c) As a condition for applying for licensure or certification of an entity or individual service provider, or for payment to an entity or individual service provider by the department, an applicant must agree to submit timely to the registry the information required under this section relating to the entity, any individual, the applicant, employees, and unsupervised volunteers of the entity or individual service provider.

(d) Within 24 hours of a court decision, order, judgment, or adjudication that an entity, individual service provider, or employee or unsupervised volunteer of an entity or individual service provider committed an act listed under (b) of this section, the entity, individual service provider, or employee or unsupervised volunteer of an entity or individual service provider shall report the court action to the department.

(e) Within 24 hours of receiving notice of an allegation that an employee, unsupervised volunteer, or former employee or unsupervised volunteer of an entity or individual service provider committed an act listed under (b) of this section within the past 10 years, the entity or individual service provider shall report the allegation to the department.

(f) The department shall prescribe by regulation the form or format by which an applicant shall submit required information to the registry.

(g) Notwithstanding any contrary provision of law, the department may also submit information described in this section to the registry. An entity or individual that is exempt from department licensure or certification and that does not receive money from the department for its services may voluntarily submit information described in this section to the department for placement in the registry.

(h) Information contained in the registry is confidential and is not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, information contained in the registry may be released to entities, individual service providers, and governmental agencies authorized and in a manner provided under this section and regulations adopted under this section.

(i) A person is presumed to be acting in good faith and is immune from civil and criminal liability if the person

(1) makes a report of medical assistance fraud, abuse, neglect, or exploitation;

(2) submits information to the registry; or

(3) fails to hire or retain an employee or unsupervised volunteer because the employee or unsupervised volunteer is included in the registry.

(j) A person about whom information is placed in the registry shall be notified of the placement by the department and may request the department to delete or modify the information to correct inaccuracies. The department shall investigate the request and make necessary deletions or modifications if the department finds no relationship between the information placed in the registry and the risk of harm to the entity's clientele.

**Sec. 47.05.340. Regulations.** The department shall adopt regulations to implement AS 47.05.300 - 47.05.390.

**Sec. 47.05.350. Use of information; immunity.** An entity or individual service provider that obtains information about an employee under a criminal history check under AS 47.05.310 may use that information only as provided for in regulations adopted by the department under AS 47.05.320. However, if an entity or individual service provider reasonably relies on the information provided under the regulations adopted by the department to deny employment to an individual who was selected for hire as an employee, including during a period of provisional employment, the entity or individual service provider is not liable in an action brought by the individual based on the employment determination resulting from the information.

**Sec. 47.05.390. Definitions.** In AS 47.05.300 - 47.05.390, unless the context otherwise requires,

- (1) "criminal history records" has the meaning given in AS 12.64.010;
- (2) "criminal justice activity" has the meaning given in AS 12.62.900;
- (3) "criminal justice agency" has the meaning given in AS 12.62.900;
- (4) "criminal justice information" has the meaning given in AS 12.62.900;
- (5) "department" means the Department of Health and Social Services;
- (6) "entity" means an entity listed in AS 47.32.010(b) and includes an owner, officer, director, member or partner of the entity;
- (7) "individual service provider" means an individual described in AS 47.05.300(a), and includes those listed in AS 47.05.300(b);
- (8) "license" includes a provisional license;
- (9) "unsupervised" means that an individual who is licensed under AS 47.32, after submitting a criminal history background check, is not physically present to observe the volunteer at the entity.

\* **Sec. 62.** Sections 15, 19, and 35 of this Act take effect on the effective date of the regulations adopted by the Department of Health and Social Services under sec. 58(b) of this Act, or March 1, 2006, whichever is earlier, but in no event earlier than July 2, 2005.