

DEPARTMENT OF HEALTH AND SOCIAL SERVICES



EMERGENCY REGULATIONS TO BE MADE PERMANENT



CHANGES TO REGULATIONS

7 AAC 10 – LICENSING, CERTIFICATION, AND APPROVALS
[Barrier Crimes, Criminal History Checks, and Centralized Registry]

7 AAC 50 – COMMUNITY CARE LICENSING
[Foster Care Licensing]



PUBLIC REVIEW DRAFT OCTOBER 19, 2007

These emergency regulations took effect October 17, 2007, and will expire February 13, 2008, unless the department makes them permanent. The department intends to make the emergency regulations permanent and seeks your comments. See the public notice dated October 19, 2007 for information about how to submit comments.

PUBLIC COMMENT PERIOD ENDS: December 3, 2007

EMERGENCY REGULATION

Register 184, January 2008

HEALTH AND SOCIAL SERVICES

Notes to reader:

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paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.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

**Title 7. Health and Social Services.
Part 1. Administration.
Chapter 10. Licensing, Certification, and Approvals.
Article 3. Barrier Crimes, Criminal History Checks, and Centralized Registry.**

7 AAC 10.930(a) is amended by adding a new paragraph to read:

(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;

EMERGENCY REGULATION

Register 184, January 2008

HEALTH AND SOCIAL SERVICES

(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.

The lead-in language of 7 AAC 10.930(g) is amended to read:

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

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7 AAC 10.930 is amended by adding a new subsection to read:

(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, or for an individual whose name appears on the centralized registry as provided under AS 47.05.330. 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, certification, approval, 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)

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		

EMERGENCY REGULATION

Register 184, January 2008

HEALTH AND SOCIAL SERVICES

7 AAC 10.935(b) is amended to read:

(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** [DENY THE VARIANCE].

7 AAC 10.935(c) is amended by adding a new paragraph to read:

(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.

EMERGENCY REGULATION

Register 184, January 2008

HEALTH AND SOCIAL SERVICES

7 AAC 10.935(e) is amended to read:

(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 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, certification, approval, 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.**

7 AAC 10.935(f) is amended to read:

(f) The commissioner will consider **a** [THE] recommendation **made under (e) of this section** [OF THE REVIEW COMMITTEE] 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.

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

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

Emergency Regulations To Be Made Permanent

7 AAC 10 - Barrier Crimes, Criminal History Checks, and Centralized Registry

7 AAC 50 – Community Care Licensing (Foster Care Licensing)

PUBLIC REVIEW DRAFT – October 19, 2007

EMERGENCY REGULATION

Register 184, January 2008

HEALTH AND SOCIAL SERVICES

**Part 4. Children's Services and Juvenile Justice.
Chapter 50. Community Care Licensing.
Article 1. Licensing Process.**

The lead-in language of 7 AAC 50.010(a) is amended to read:

7 AAC 50.010. Exemptions from licensure requirements. (a) **The** [IN ADDITION TO THOSE PERSONS WHO ARE EXEMPT FROM THE REQUIREMENTS OF THIS CHAPTER UNDER AS 47.35.015, THE] following persons are exempt from the licensure requirements of **AS 47.32 and this chapter** [AS 47.35.005 - 47.35.900]:

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7 AAC 50.010(a) is amended by adding a new paragraph to read:

(6) an individual seeking to operate a foster home if that individual provides care only for one or more relatives, unless the department requires licensure under an agreement for services;

(Eff. 1/1/96, Register 136; am 3/1/98, Register 145; am 10/17/2007, Register 184)

Authority: AS 44.29.020 **AS 47.32.020** [AS 47.35.010]
AS 47.32.010 **AS 47.32.030** [AS 47.35.015]