

Lower health
insurance costs:

REPEAL THE 80TH PERCENTILE RULE



Public Comment Opportunities

Provide oral comments in-person or virtually:

- *Anchorage: February 22, 2023, 550 West 7th Avenue, room 104 (or virtually), 3pm to 7pm*
- *Anchorage: February 24, 2023, same as above or virtually, 1pm to 5:30pm*
- *Juneau: March 1, 2023, 333 Willoughby Ave, 9th floor, Conference Room A, 1pm to 5pm*

March 6 comment deadline

Comment in writing to:

Sarah Bailey, P.O. Box 110805, Juneau, AK, 99811-0805

or by email to sarah.bailey@alaska.gov

As of February 21, 2023 this study, in its entirety, can be found at:
<https://www.commerce.alaska.gov/web/Portals/11/Pub/Headlines/ISER%2080th%20Percentile%20Report.pdf>

How Has the 80th Percentile Rule Affected Alaska's Health-Care Expenditures?

Prepared for
Alaska Office of Management and Budget

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Executive Summary: How Has the 80th Percentile Rule Affected Alaska's Health-Care Expenditures?

BACKGROUND

In 2004, Alaska's Division of Insurance adopted what's known as the 80th percentile rule. That rule sets a minimum for how much health-insurance companies have to pay, when Alaskans with private insurance plans see doctors or other providers outside their insurers' networks.

The rule applies to all individual plans and to most private group plans.* The division established the rule after it got complaints from Alaskans who had insurance but faced unexpectedly large remaining bills, after their insurance companies had paid a share.

The 80th percentile rule requires insurers to base their payments for out-of-network claims on the amount at or above 80 percent of what all the providers charge for a specific service, in a given area of the state. (This is not, as many Alaskans believe, a requirement that insurers pay 80% of the billed charges. The back page gives an example of how the rule works.)

Spending for health-care in Alaska increased from \$1.5 billion in 1991 to \$4.8 billion in 2005 and \$8.2 billion by 2014. Critics think the rule may be adding to that soaring spending, partly because over time providers could increase their charges—and insurance payments would have to keep pace.

The state Office of Management and Budget asked us to assess how the 80th percentile rule has affected Alaska's overall health-care spending. Our analysis looks narrowly at just that potential effect of the rule. It's important to say that we're not taking any position on whether the state should keep, change, or repeal the rule.

And remember that spending is not the same as cost. How much Alaskans spend for health care depends not only on how much they pay for services, but also on how much they use those services. We don't have broad information on costs, or on whether the 80th percentile rule has in fact reduced out-of-pocket costs for Alaskans seeing out-of-network providers.

WHAT DID WE DO?

We used federal data to compare Alaska health-care spending with that in other states from 1991 to 2004, and identified a group of states with similar growth in spending before the 80th

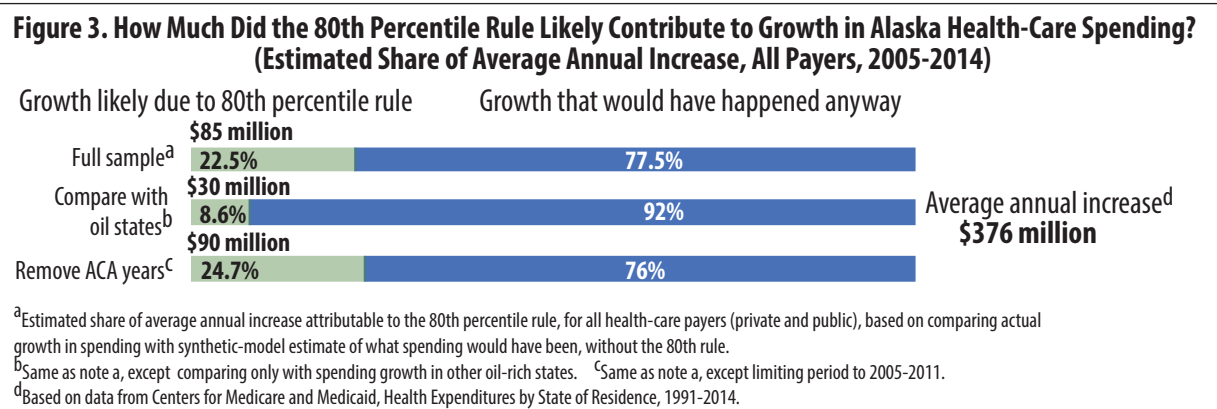
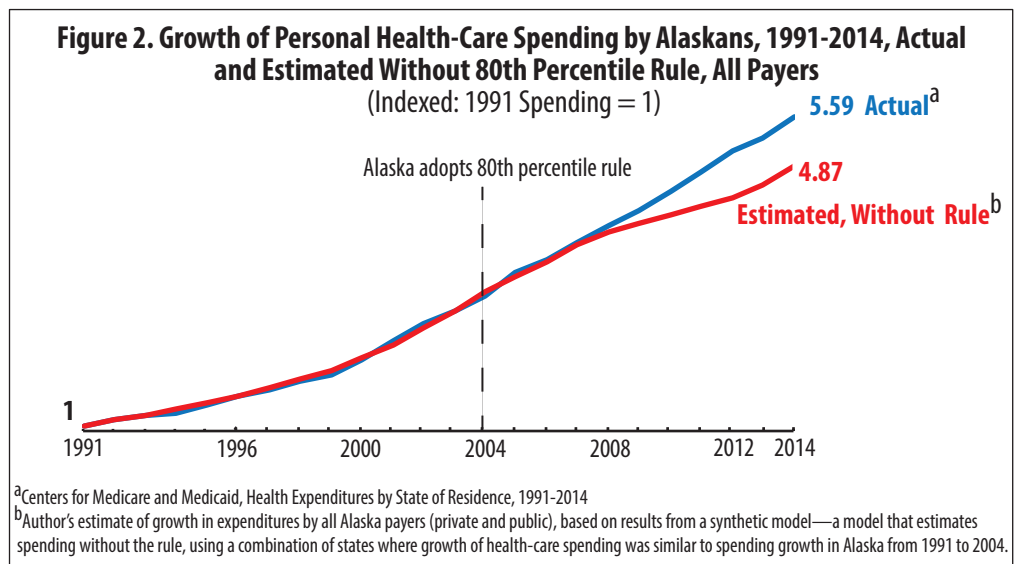
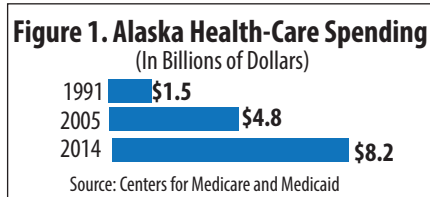
percentile rule was enacted. We then built a model to project how much spending would likely have increased in Alaska, without the rule.

WHAT DID WE FIND?

Figures 2 and 3 show different ways of estimating effects of the 80th percentile rule, for all health-care payers (private and public). Figure 2 compares actual and estimated growth—without the rule—through an index, with 1991 as the benchmark. Figure 3 shows average annual growth from 2005-2014, and estimates percentages attributable to the rule.

- Without the rule, spending in 2014 would have been 4.9 times what it had been in 1991, while actual spending was 5.6 times (Figure 2). That estimate of spending without the rule is based on our full sample, comparing Alaska with states that had similar pre-2004 spending growth.

- The average annual increase in spending from 2005 through 2014 was \$376 million, and the rule accounted for anywhere from 8% to nearly 25% of that annual growth (Figure 3). We report a range of results, because the basis of comparison makes a difference. If we compare Alaska with states that had similar pre-2004 spending growth, about 22.5% of the annual increase can be attributed to the rule. But if we instead compare Alaska growth just with that in other oil-rich states, the percentage drops to 9%, and if we eliminate the effects of the Affordable Care Act, the percentage increases to just under 25%.



* It doesn't apply to plans offered by firms that self-insure, which is most common among the largest employers.

WHY DO MORE THAN ONE COMPARISON?

As we said earlier, our broad base for estimating effects of the 80th percentile rule is a comparison with states that had similar growth in health-care spending before Alaska adopted the 80th percentile rule, including spending by all payers, private and public.

But using that base alone doesn't take into account other reasonable ways of estimating effects of the rule—so we made a range of estimates, using somewhat different bases.

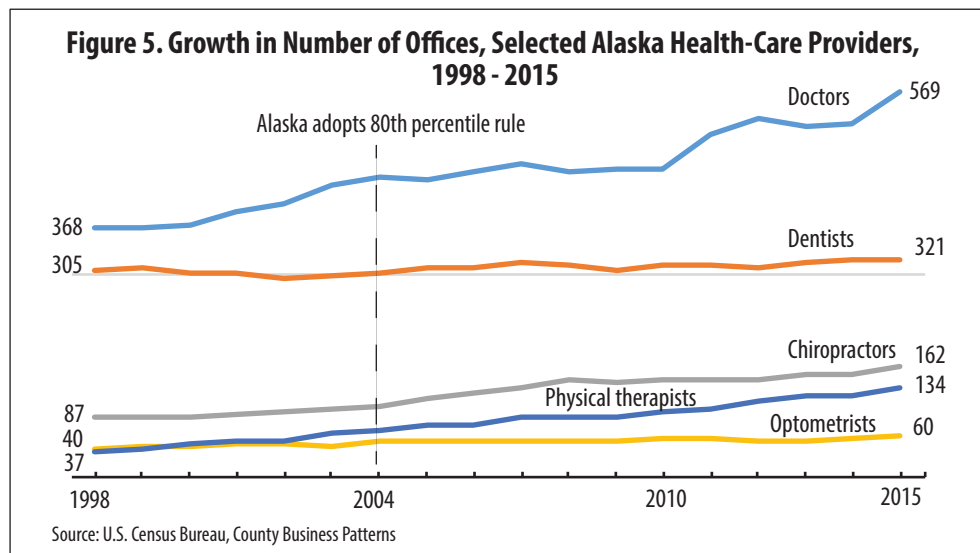
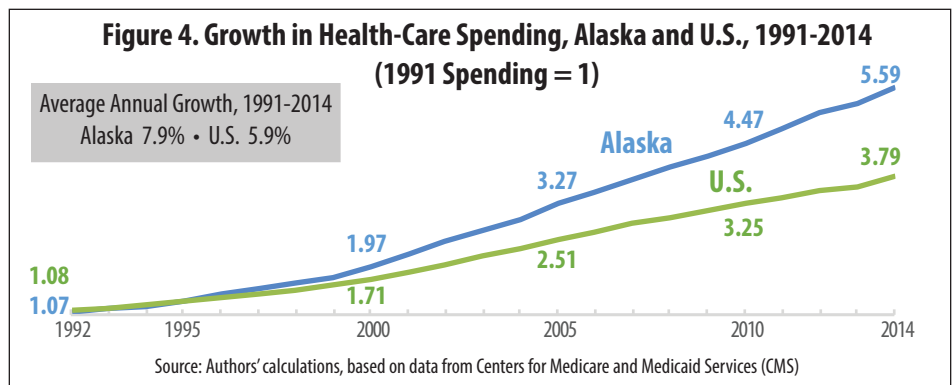
In general, excluding spending by Medicare and Medicaid payers, and eliminating the years after the ACA went into effect, yield higher estimates of how much the rule added to the growth of health-care spending. Using changes in oil-rich states as a comparison produces a lower estimate.

WHAT ELSE IS RESPONSIBLE FOR GROWTH?

Most of the growth in spending since 2005 wasn't due to the 80th percentile rule. That spending—in Alaska and across the U.S.—has been rising fast since the 1990s. The pace of growth was similar in Alaska and nationwide until the late 1990s, but after that spending in Alaska began growing faster. By 2014, spending in Alaska was 5.8 times what it had been in 1991; nationwide it was 3.8 times (Figure 4).

Analysts cite a number of reasons why health-care spending has climbed so much everywhere—including high prices for new procedures, technology, and drugs; inadequate management of widespread chronic diseases; and high administrative costs.

In Alaska, health-care infrastructure—particularly doctor's offices—has grown considerably (Figure 5). This increase in availability and variety of facilities has made it easier for Alaskans to get care in-state, and it's safe to assume that increased availability translates into more use.



CONCLUSIONS

We looked only at the aggregate increase in spending that likely resulted from the 80th percentile rule. Future work should focus on identifying how the rule affected health-care use and out-of-pocket spending.

Also, before there can be an analysis of how the rule has affected prices in various parts of the health-care system, the necessary data has to be collected.

Explaining Alaska's 80th Percentile Rule: It Does Not Mean Insurers Have to Pay 80% of Billed Charges

The name "80th percentile rule" is confusing, because it leads people to think it requires health-insurers to pay 80% of whatever are determined to be customary rates for medical services. That's not true. Here's how it works:

- Say your hip is worn out. You go to a surgeon and have it replaced.
- You have health-insurance, but the surgeon who replaces your hip is outside your insurance network. Surgeons in your network have agreed to charge some specific amount for your new hip—but those outside the network set their own rates.
- Your out-of-network surgeon bills your insurance company, at a rate that may be more or less than other surgeons in your area charge to replace a hip.
- Under the 80th percentile rule, your insurance company has to base its payment on the billed amount that is at the 80th percentile of all the bills—that is, 80% of bills are below that amount, and 20% are above.
- The bill at the 80th percentile of all bills becomes the basis—called the allowed amount—for what insurance pays for your hip surgery. It pays whatever share of that allowed amount your policy calls for—in many cases, that's 60% for out-of-network providers.

Protecting Alaskans from Increased Health Care Costs

Background

- The 80th percentile rule was enacted in 2004 to protect members from balance billing
- The Federal No Surprises Act (NSA), passed in 2020, prohibits balance billing for emergency and ancillary services
- The 80th percentile rule applies to all out-of-network (OON) services - the NSA applies to emergency and ancillary services
- No other state in the USA has anything resembling the 80th percentile

Impacts of the 80th Percentile

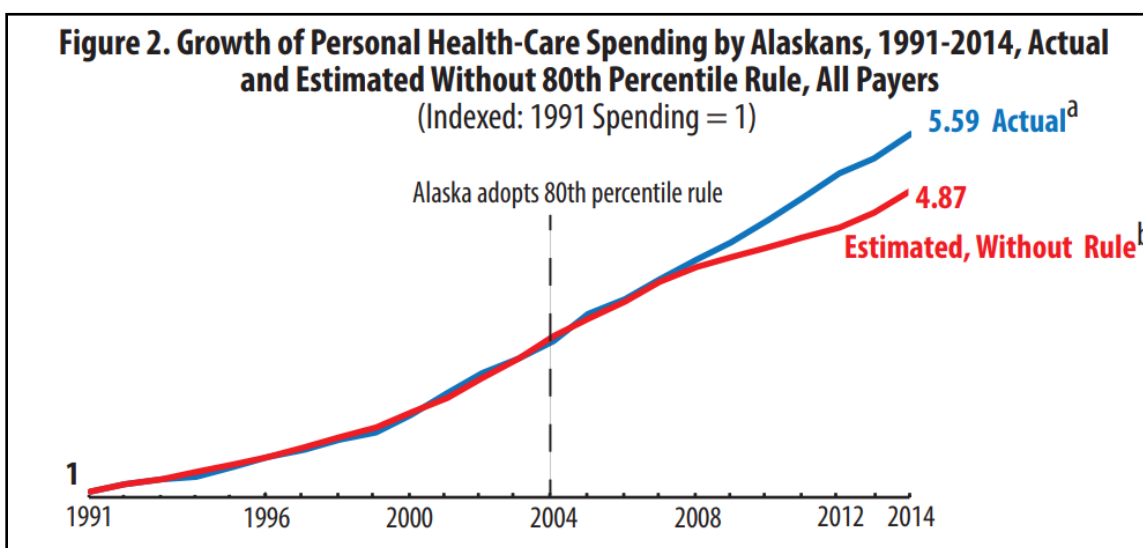
- Insured groups see their costs continue to increase because of the 80th percentile
- Alaskans see higher health care inflation
- With enactment of the NSA, Alaskans are subject to increased confusion with respect to their status when receiving OON services

80th Percentile Regulation Inflationary Impacts

- Average AK unit cost trend for OON (80th percentile) is 4.0%
- Average AK unit cost trend for in-network contracted services is 1.8%
- Providers can demand higher reimbursement for in-network service due to a disincentive to contract

Service	Code	Alaska		Washington	
		In network Avg	80th Percentile	In network Avg	OON Avg
Emergency Dept.	99284	684	1,195	239	236
Office Visit	99213	188	215	122	108
Covid Antigen Detection	87426	95	139	28	40

- A report by UAA states the 80th percentile regulation accounts for “between 8.61% and 24.65% of the increases in expenditures the state has experienced over the last decade. These results are statistically significant and robust.” This increase is typically borne by employers and consumers directly.



Source: “How Has the 80th Percentile Rule Affected Alaska’s Health-Care Expenditures?” Prepared for Alaska Office of Management and Budget, by the Institute of Social and Economic Research and Department of Economics and Public Policy University of Alaska Anchorage

NOTICE OF PROPOSED REGULATION CHANGES ON THE BASIS OF PAYMENT FOR
HEALTH CARE SERVICE CLAIMS IN THE REGULATIONS OF THE DIVISION OF
INSURANCE

BRIEF DESCRIPTION

The Alaska Division of Insurance proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code, dealing with the basis of payment for health care services or supplies including the following:

3AAC 26.110 is proposed to be amended to delete paragraphs (a)(1) and (2) and revise (4) & (5)(A). The intent of this amendment is to abolish the 80th percentile as the floor for health care claim payments. The change may lower the cost of health care in the state as the reimbursement level established in these paragraphs has been identified as increasing the cost of health care.

The existing 80th percentile regulation requires health care insurers to pay out-of-network health care providers for covered services or supplies based on an amount that is equal to or greater than the 80th percentile of charges in the geographical area. The 80th percentile has long served as a mechanism for consumer protection at the state level. The federal No Surprises Act was implemented January 1, 2022, and protects consumers from some kinds of surprise medical bills from out-of-network providers.

You may comment on the proposed regulation changes, including the potential costs to private persons in complying with the proposed changes, by submitting written comments to Sarah Bailey, P.O. Box 110805, Juneau, AK 99811-0805. Additionally, the Division of Insurance will accept comments by fax at 907-465-3422 and by electronic mail at sarah.bailey@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 pm on March 6, 2022. Oral or written comments also may be submitted in person at the scheduled hearings.

Anchorage

An in-person hearing will be held on February 22, 2023, at Room 104, 550 West 7th Avenue, Anchorage, Alaska, from 3:00 p.m. to 7:00 p.m. If you would like to join virtually via Microsoft Teams, use the links below:

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 275 293 146 285

Passcode: FU9wjJ

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

260748889@t.plcm.vc

Video Conference ID: 119 384 228 4

[Alternate VTC instructions](#)

Or call in (audio only)

+1 907-202-7104,,572923133# United States, Anchorage

Phone Conference ID: 572 923 133#

An additional in-person hearing will be held on February 24, at Room 102, 550 West 7th Avenue, Anchorage, Alaska from 1:00 p.m. to 5:30 p.m. If you would like to join virtually via Microsoft Teams, use the links below:

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 230 493 237 224

Passcode: bkhqLj

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

260748889@t.plcm.vc

Video Conference ID: 111 500 245 7

[Alternate VTC instructions](#)

Or call in (audio only)

+1 907-202-7104,,377227527# United States, Anchorage

Phone Conference ID: 377 227 527#

Juneau

An additional hearing will be held on March 1, 2023, at Conference Room A, on the 9th floor of the State Office Building at 333 Willoughby Ave in Juneau, Alaska from 1:00 p.m. to 5:00 p.m. If you would like to join virtually via Microsoft Teams, use the links below:

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 252 164 501 888

Passcode: rEZrUV

[Download Teams](#) | [Join on the web](#)

Join with a video conferencing device

260748889@t.plcm.vc

Video Conference ID: 115 372 562 0

[Alternate VTC instructions](#)

Or call in (audio only)

+1 907-202-7104,,928898457# United States, Anchorage

Phone Conference ID: 928 898 457#

You may submit written questions relevant to the proposed action to the Division of Insurance; Attention: Sarah Bailey; P.O. Box 110805, Juneau, AK 99811-0805 or by email to sarah.bailey@alaska.gov. The questions must be received at least 10 days before the end of the public comment period. The Division of Insurance will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System and the Division of Insurance website.

If you are a person with a disability who needs a special accommodation in order to participate in the process, please contact Kelli Patterson at kelli.patterson@alaska.gov or 907-465-2596 no later than February 15, 2023, to ensure any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Sarah Bailey at sarah.bailey@alaska.gov or 907-465-4608.

After the public comment period ends, the Division of Insurance will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. You should comment during the time allowed if your interests could be affected. Written comments received are public records and are subject to public inspection.

Statutory authority: AS 21.06.090, AS 21.36.125

Statutes being implemented, interpreted, or made specific: AS 21.36.125.

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

The Division of Insurance keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Division of Insurance notices of proposed regulation changes. To be added to or removed from the list, send a request to the Division of Insurance Publications Specialist Mike Gorman at mike.gorman@alaska.gov, giving your name, and either your e-mail address or mailing address, as you prefer for receiving notices.

Date: January 31, 2023



Lori Wing-Heier
Director

Title 3. Commerce, Community, and Economic Development.

Part 2. Division of Insurance

Chapter 26. Trade Practices.

Article 1. Unfair Claims Settlement Acts or Practices.

3AAC 26.110(a) is amended to read:

3 AAC 26.110. Additional standards for prompt, fair, and equitable settlements of health claims. (a) A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall

[1) MAINTAIN OR USE A STATISTICALLY CREDIBLE PROFILE OF COVERED HEALTH CARE SERVICES AND SUPPLIES ON WHICH TO BASE PAYMENT; THE PROFILE MUST

(A) BE UPDATED AT LEAST EVERY SIX MONTHS;

(B) CONTAIN BILLED CHARGES FOR SERVICES PERFORMED NOT MORE THAN ONE YEAR BEFORE THE DATE OF THE MOST RECENT PROFILE; AND

(C) CONTAIN BILLED CHARGES FOR EACH GEOGRAPHICAL AREA IN WHICH A CLAIMANT MIGHT RECEIVE TREATMENT OR, IF STATISTICALLY CREDIBLE DATA FOR A PARTICULAR SERVICE OR SUPPLY ITEM IN A CERTAIN GEOGRAPHICAL AREA IS UNAVAILABLE, CONTAIN A SUFFICIENT NUMBER OF BILLED CHARGES FOR THAT SERVICE OR SUPPLY ITEM FROM

ANOTHER GEOGRAPHICAL AREA SO THAT A RELIABLE BASIS IS ESTABLISHED;

(2) EXCEPT AS PROVIDED IN (3) OF THIS SUBSECTION, DETERMINE THE FINAL PAYMENT FOR A COVERED SERVICE OR SUPPLY BASED ON AN AMOUNT THAT

(A) REFLECTS THE GENERAL COST DIFFERENCES BETWEEN THE GEOGRAPHICAL AREA WHERE THE SERVICE WAS PERFORMED AND THE OTHER GEOGRAPHICAL AREAS USED IN ESTABLISHING THE STATISTICAL CREDIBLE PROFILE UNDER (1) OF THIS SUBSECTION; AND

(B) IS EQUAL TO OR GREATER THAN THE 80TH PERCENTILE OF CHARGES UNDER (1) OF THIS SUBSECTION FOR THE HEALTH CARE SERVICES OR SUPPLIES;]

[3)] (1) for a vaccine covered by an insurance policy that is an included vaccine and purchased by a provider instead of obtained from the state under the statewide immunization program established under AS 18.09.200, determine the final payment for the covered vaccine at an amount equal to or greater than the cost of the state purchased vaccine under the statewide immunization program; in this paragraph, “included vaccine” has the meaning given in AS 18.09.990;

[4] (2) provide with any claim payment an explanation of the basis of payments in clear and simple terms[, INCLUDING EXPLANATION OF ANY GEOGRAPHICAL ADJUSTMENTS MADE UNDER (2)(A) OF THIS SUBSECTION,] and document the explanation provided in the claim file; and

Register _____, _____ 2023 COMMERCE, COMMUNITY, AND EC. DEV.

[5] (3) provide an explanation in the health insurance policy of the basis of payments, including any payments for which a covered individual may be responsible and include on any schedule or summary of benefits page accompanying the policy

[(A) THE PERCENTILE USED TO DETERMINE FINAL PAYMENT UNDER (2)(B) OF THIS SUBSECTION; AND (B)] a statement regarding whether the covered individual is responsible for any amount billed for a health care service or supply item that exceeds the final payment. (Eff. 5/6/89, Register 110; am 4/20/97, Register 142; am 1/2/98, Register 145; am 9/15/2004, Register 171; am 10/16/2011, Register 200; am 12/16/2015, Register 216; am 8/20/2016, Register 219; am / / , Register)

Authority:

AS 21.06.090 AS 21.36.125