



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: May 22, 2018

TIME: 4:18 PM

WSR 18-11-124

Agency: Department of Social and Health Services, Developmental Disabilities Administration

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-04-070 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____ ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-823-0600 "How do I show that I have another neurological or other condition similar to intellectual disability?", WAC 388-823-0610 "If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial limitations?", WAC 388-823-1005 "When does my eligibility as a DDA client expire?", and WAC 388-823-1010 "When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 26, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2

Date of intended adoption: Not earlier than June 27, 2018 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: PO Box 45850
Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. June 26, 2018

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant

Phone: 360-664-6092

Fax: 360-664-6185

TTY: 711 Relay Service

Email: Kildaja@dshs.wa.gov

Other:

By (date) June 12, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending these rules to align with the definition of "developmental disability" under RCW 71A.10.020.

Reasons supporting proposal: These amendments are necessary in order to remove Developmental Disabilities Administration (DDA) eligibility as a barrier to accessing medically intensive children program (MICP) services under chapter 182-551 WAC, ensure that clients who became eligible for DDA due solely to MICP eligibility remain DDA eligible as long as they continue to receive fee-for-service (FFS) MICP services, and simplify the review and expiration rules for clients turning age twenty.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.10.020

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Department of Social and Health Services

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1589
Implementation:	Beth Krehbiel	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1547
Enforcement:	Beth Krehbiel	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1547

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Chantelle Diaz
Address: P.O. Box 45310, Olympia, WA 98504-5310
Phone: 360-407-1589
Fax: 360-407-0955
TTY: 1-800-833-6388
Email: Chantelle.Diaz@dshs.wa.gov
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions, if necessary: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

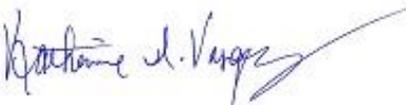
If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: May 21, 2018	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability? In order to be considered for eligibility under the category of another neurological or other condition similar to intellectual disability you must (~~meet one of the three criteria below~~):

(1) (~~You are~~) Be age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that (~~is known by reputable authorities to cause intellectual and adaptive skills deficits. Your condition meets all of the following~~):

(a) Originated before age eighteen;

(b) Is known by reputable authorities to cause intellectual and adaptive skills deficits;

(c) Is expected to continue indefinitely without improvement;

(~~e~~) (d) Is other than intellectual disability, autism, cerebral palsy, or epilepsy;

(~~d~~) (e) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; and

(~~e~~) (f) Has resulted in substantial functional limitations.

(2) (~~You are under the age of eighteen and are eligible for DSHS paid in-home nursing through the~~) Be receiving fee-for-service medically intensive children program ((defined in WAC 182-551-3000.)) (MICP) services under chapter 182-551 WAC, and have been continuously eligible for DDA due solely to your MICP eligibility since before the effective date of this rule; or

(3) (~~You are~~) Be under the age of ten and have one or more developmental delays.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations? If you have an eligible condition of another neurological or other condition similar to intellectual disability, in order to meet the definition of substantial functional limitations you must have impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social or behavioral disorder.

(1) For WAC 388-823-0600(1) evidence of substantial functional limitations requires documentation of (a) and (b) below:

(a) For impairment in intellectual abilities, either (~~subitem~~) subsection (i) or (ii) or (iii) ((below)) of this section:

(i) An FSIQ score of more than 1.5 standard deviations below the mean ((as described in)) under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730; ((or))

(ii) If you are under the age of twenty, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or

(iii) A statement by a licensed physician, a licensed psychologist, or a school psychologist that your condition is so severe that you are unable to demonstrate the minimal skills required to complete testing for an FSIQ.

(b) For impairment in adaptive skills, a score of more than two standard deviations below the mean (~~(per)~~) under WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) For WAC 388-823-0600(2) you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program (~~(offered through DDA and defined in WAC 182-551-3000)~~) under chapter 182-551 WAC.

(3) For WAC 388-823-0600(3) evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:

(a) You are under the age of three and have one or more developmental delays (~~(per)~~) under WAC 388-823-0770(~~(, or)~~);

(b) You are under the age of three and meet the ESIT eligibility requirements(~~(, or)~~); or

(c) You are under the age of ten and have three or more developmental delays (~~(per)~~) under WAC 388-823-0770.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1005 When does my eligibility as a DDA client expire? (1) If you are determined eligible (~~(prior to)~~) before age three, your eligibility expires on your fourth birthday.

(2) If you are determined eligible at age three but under age ten under developmental delays or Down syndrome your eligibility expires on your tenth birthday.

(3) (~~(If you are determined eligible under another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial limitations, your eligibility expires on your twentieth birthday.~~)

(4) ~~If your eligibility determination is based solely on your need for nursing through the medically intensive children program, your eligibility expires when you are no longer eligible for the program or your eighteenth birthday, whichever comes first.~~

(5) DDA will notify you at least six months before your eligibility expiration date.

(6) (4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.

(7) (5) If you fail to reapply before your expiration date or if DDA receives your reapplication less than sixty days (~~(prior)~~) before your expiration date and DDA does not have sufficient time to make an eligibility determination by the date of expiration, DDA eligibility will expire and your DDA paid services will stop.

(a) If DDA determines you eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible (~~(pursuant to)~~) under WAC 388-823-0100.

(b) If DDA determines you eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.

~~((+8))~~ (6) This expiration of eligibility takes effect even if DDA is unable to locate you to provide written notification that eligibility is expiring.

~~((+9))~~ (7) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? (1) DDA will review your eligibility ~~((at))~~:

~~(a) If you are age nineteen ((with termination occurring no sooner than your twentieth birthday if your most current)) and you have not received an eligibility determination ((was at sixteen or younger under intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.~~

~~(2) DDA will review your eligibility prior to the initial)) since on or before your sixteenth birthday;~~

(b) If you are age nineteen and were determined eligible under another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial functional limitations;

(c) Before authorization of any DDA-paid service ((from DDA when)) if you are not currently receiving paid services ((and you are age nineteen or older)) and your most current eligibility determination was made ((prior to)) before June 1, 2005((-

~~(3) DDA will review your eligibility if DDA discovers:~~

~~(a) Your eligibility determination was made in error)); ((or~~

~~(b)) (d) If the evidence used to make your most recent eligibility determination ((appears to be)) is insufficient, ((in)) contains an error, or appears fraudulent; ((or~~

~~(e)) (e) If new ((diagnostic)) information becomes available that does not support your current eligibility determination; or~~

(f) If you were determined eligible due solely to your eligibility for fee-for-service (FFS) medically intensive children's program (MICP) services and you are no longer eligible for FFS MICP services.

~~((+4)) (2) If DDA requires additional information to make a determination of eligibility during a review and you do not ((respond to the request for additional)) provide sufficient information, DDA will terminate your eligibility ((and any DDA services you are receiving either)):~~

~~(a) On your twentieth birthday if the review is because you ((will be turning twenty)) are age nineteen; or~~

~~(b) Ninety days after DDA requests the information if the review is because:~~

~~(i) You have requested a paid service;~~

~~(ii) The evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;~~

~~(iii) New information is available that does not support your current eligibility determination; or~~

(iv) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.