



# 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 17, 2019

TIME: 9:25 AM

WSR 19-11-081

**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** 19-04-068 ; 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 388-823-0770 "What evidence do I need of developmental delays?", WAC 388-823-1010 "When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?", and WAC 388-823-1015 "What is the definition of "DDA paid services" in WAC 388-823-1010(2)?".

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
June 25, 2019	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2">https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2</a>

**Date of intended adoption:** Not earlier than June 26, 2019 (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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. June 25, 2019

**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](mailto:Kildaja@dshs.wa.gov)

Other:

By (date) June 11, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed amendments to these rules increase the amount of time an assessment may be used as evidence of developmental delays, clarify for internal DDA eligibility workers when an eligibility review is required for clients who are 19 years old, and clarify the definition of a "DDA-paid service".

**Reasons supporting proposal:** Increasing the amount of time an assessment may be used as evidence will simplify the eligibility determination process for many clients who may no longer be required to obtain a new assessment before receiving an eligibility determination. Amendments to WAC 388-823-1010 were requested by eligibility workers; the change is a clarification and is not a substantive change. Replacing terminology in WAC 388-823-1015 aligns with how the term has been updated in other parts of Title 388 WAC.

**Statutory authority for adoption:** RCW 71A.12.030, RCW 71A.12.120

**Statute being implemented:** RCW 71A.12.030

**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:	Will Nichol	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1510
Enforcement:	Will Nichol	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1510

**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:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: Under RCW 34.05.328(5)(b)(vii), the Department is exempt from preparing a cost-benefit analysis if the rules relate to client medical or financial eligibility.

**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:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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:

<b>Date:</b> May 14, 2019	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

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

**WAC 388-823-0770 What evidence do I need of developmental delays?** (1) Evidence of substantial functional limitations requires developmental delays of at least 1.5 standard deviations or twenty-five percent or more of the chronological age in one or more of the following developmental areas based on an assessment current within the past ~~((12))~~ eighteen months:

- (a) Physical skills (fine or gross motor);
- (b) Self help/adaptive skills;
- (c) Expressive or receptive communication, including American sign language;
- (d) Social/emotional skills; and
- (e) Cognitive, academic, or problem solving skills.

(2) The number of areas in which you are required to have delays to meet the evidence is specific to your age.

(3) Tools used to determine developmental delays must be diagnostic assessments that are designed to measure the developmental areas in subsection (1) of this section and are appropriate to the age of the child being tested.

(4) The assessment must be administered by one of the following professionals qualified to administer the assessment of developmental areas:

- (a) Licensed physician;
- (b) Licensed psychologist or certified school psychologist;
- (c) Speech language pathologist;
- (d) Audiologist;
- (e) Registered occupational therapist;
- (f) Licensed physical therapist;
- (g) Registered nurse;
- (h) Certified teacher;
- (i) Masters level social worker; or
- (j) Orientation and mobility specialist.

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

**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:

(a) If you are age nineteen and ~~((you have not received an))~~ your most recent eligibility determination ~~((since on or))~~ was completed 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 if you are not currently receiving paid services and your most current eligibility determination was made before June 1, 2005;

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

(e) If new 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.

(2) If DDA requires additional information to make a determination of eligibility during a review and you do not provide sufficient information, DDA will terminate your eligibility:

(a) On your twentieth birthday if the review is because you 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.

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

**WAC 388-823-1015 What is the definition of "DDA-paid services" in WAC ((388-823-1010(2))) 388-823-1010? "DDA-paid services" means a service or program administered by DDA as evidenced by:**

(1) A DDA social services authorization ((of a paid service)) within the last ninety days ((as evidenced by a social services authorization)) in ((the)) a DSHS payment system((~~7~~));

(2) A county authorization ((for day program services,~~7~~));

(3) A DDA ((individual)) service plan approving a DDA service or program((~~7~~));

(4) Residence in a ((SOLA, RHC, or ICF/ID,~~7~~)) residential habilitation center; or

(5) Documentation of DDA approval of your absence from DDA paid services for more than ninety days with available funding for your planned return to services.