



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: April 16, 2021

TIME: 9:49 PM

WSR 21-09-054

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 20-21-095 ; 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 388-823-0500 How do I show that I have autism as an eligible condition?, WAC 388-823-0510 If I have autism how do I meet the definition of substantial limitations?, and WAC 388-823-0720 What evidence do I need of my FSIQ?.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 25, 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street SE Olympia, WA 98501 Or by Skype	Public parking at 11th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID 19 pandemic, hearing may be held via Skype, see DSHS website for most up to date information.

Date of intended adoption: Not earlier that May 26, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: P.O. Box 45850
Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. May 25, 2021

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant t

Phone: 360-664-6092

Fax: 360-664-6185

TTY: 711 Relay Service

Email: Kildaja@dshs.wa.gov

Other:

By (date) May 11, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Developmental Disabilities Administration (DDA) is proposing to amend these rules to align with changes to the Diagnostic Statistical Manual, extend the age range for acceptable evidence of onset, remove the severity level criteria requirement, and add more FSIQ assessment types.

Reasons supporting proposal: The proposed amendments follow professional guidance to transition from DSM-IV to DSM-V for autism diagnoses, increase the age range for acceptable evidence of onset at clinical recommendations, and add additional tests that DDA will accept when used to determine a person's FSIQ.

Statutory authority for adoption: RCW 71A.12.030, RCW 71A.12.020, RCW 71A.16.020

Statute being implemented: RCW 71A.12.020, RCW 71A.16.020

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes 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 Private
 Public
 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	360-407-1583
Enforcement:	Will Nichol	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1583

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:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

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: April 15, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

AMENDATORY SECTION (Amending WSR 19-19-061, filed 9/16/19, effective 10/17/19)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? (1) To be considered for eligibility under the condition of autism:

~~(a) You must be age four or older ((and have a diagnosis by a qualified professional which meets the conditions in subsection (1) or (2) of this section, as well as subsections (3), (4), and (5) of this section:~~

~~(1) Autistic disorder 299.00 per the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR); or~~

~~(2))~~;

(b) You must have been diagnosed with:

(i) Autism spectrum disorder 299.00 ((per)) under the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5) ((, with a severity level of 2 or 3 in both columns of the severity level scale.

~~(3) The condition is expected to continue indefinitely with evidence of onset before age three.~~

~~(4) An acceptable diagnostic report includes documentation of all diagnostic criteria specified in the DSM-IV-TR or DSM-5.~~

~~(5) DDA will accept a diagnosis from any of the following professionals))~~; or

(ii) Autistic disorder 299.00 under the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR) before (six months after the effective date of this rule);

(c) You must have been diagnosed by:

~~((a))~~ (i) A board certified neurologist;

~~((b))~~ (ii) A board certified psychiatrist;

~~((c))~~ (iii) A licensed psychologist;

~~((d))~~ (iv) An advanced registered nurse practitioner (ARNP) associated with an autism center, developmental center, or center of excellence;

~~((e))~~ (v) A licensed physician associated with an autism center, developmental center, or center of excellence; or

~~((f))~~ (vi) A board certified developmental and behavioral pediatrician.

(d) The condition must be expected to continue indefinitely; and

(e) You must provide evidence of onset before age five.

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

WAC 388-823-0510 ((If I have)) What constitutes substantial limitation due to autism((, how do I meet the definition of substantial limitations))? ((If you have an eligible condition of autism, in order to meet the definition of substantial limitations you must meet the criteria in subsections (1) and (2) in this section:))

(1) ((Documentation of)) To establish substantial limitation due to autistic disorder diagnosed under the DSM-IV-TR, you must have an adaptive skills test score ((of)) more than two standard deviations

below the mean as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750 (~~(, and)~~).

~~(2) ((If your diagnosis is)) To establish substantial limitation due to autism spectrum disorder ((per)) diagnosed under the DSM-5 ((, documentation of a FSIQ of more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to all of WAC 388-823-0720 and 388-823-0730.~~

~~(a) If you have a FSIQ score of one standard deviation below the mean or higher as described in WAC 388-823-0720, you may present additional documentation described in subitem (i) or (ii) in this subsection, signed by the diagnosing professional, which shows that you meet the criteria for autistic disorder 299.00 per the DSM-IV-TR:~~

~~(i) A completed autistic disorder confirmation form (available from DDA), or~~

~~(ii) Other documentation that provides the same information as required on the autistic disorder confirmation form.~~

~~(b) If you are unable to complete a FSIQ test, you may provide))~~
you must:

(a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and

(b) Have either:

(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or

(ii) A written statement ((by the diagnosing)) from a professional qualified to administer intellectual tests stating that your ((condition is so severe that you are unable to demonstrate the minimal skills required to complete)) autism prevents you from completing the testing.

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

WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Differential abilities scale (DAS)	69 or less	77 or less	84 or less
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less
Woodcock-Johnson-Test of <u>achievement</u> III ((test of cognitive abilities (WJ III(†))) or IV	69 or less	77 or less	84 or less
Reynolds <u>intellectual assessment scales, 2nd edition (RIAS 2)</u>	<u>69 or less</u>	<u>77 or less</u>	<u>84 or less</u>

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, reasonable in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are nonverbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS, WNV)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning Index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of nineteen at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.