



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 18, 2023
TIME: 2:56 PM

WSR 23-22-002

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 23-14-040 ; 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) WAC 388-823-0600, How do I show that I have another neurological or other condition similar to intellectual disability?, 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?, 388-823-1005, When does my eligibility as a DDA client expire?, and 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:
December 5, 2023	10:00 a.m.	Virtual via Teams or Call in	Hearings are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: Not earlier than December 6, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia WA 98504
 Email: DSHSRulesCoordinator@dshs.wa.gov
 Fax: 360-664-6185
 Other:
 By (date) 5:00 p.m. on December 5, 2023

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant
 Phone: 360-664-6036
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: shelley.tencza@dshs.wa.gov
 Other:
 By (date) 5:00 p.m. on November 21, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DDA is amending these rules to implement House Bill 1407 (2023), make changes to the eligibility expiration processes, and clarify language in the eligibility review section.

Reasons supporting proposal: See purpose.

Statutory authority for adoption: RCW 71A.16.020

Statute being implemented: RCW 71A.16.040

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

Type of proponent: Private Public Governmental

Name of proponent: (person or organization)

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	PO Box 45310, Olympia WA 98504-5310	360-790-4732
Implementation:	Will Nichol	PO Box 45310, Olympia WA 98504-5310	360-407-1583
Enforcement:	Will Nichol	PO 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:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

No: Please explain: These rules relate to internal governmental operations that are not subject to violation by a nongovernment party.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 checked="" 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 checked="" 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) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

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

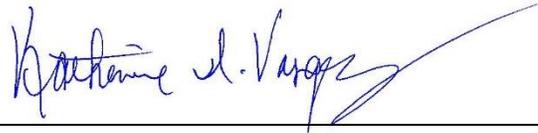
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 17, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



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

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:

(1) Be age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that:

(a) Originated before age (~~(eighteen)~~) 18;

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

(c) Is expected to continue indefinitely without improvement;

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

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

(f) Has resulted in substantial functional limitations.

(2) Be receiving fee-for-service medically intensive children program (MICP) services under chapter 182-551 WAC, and have been continuously eligible for DDA due solely to your MICP eligibility since before August 13, 2018; or

(3) Be under the age of (~~(ten)~~) 20 and have one or more developmental delays.

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

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))~~) a neurological or chromosomal disorder, evidence of substantial functional limitations requires documentation of (a) and (b) below:

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

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

(ii) If you are under the age of (~~(twenty)~~) 20, 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 written statement (~~(by)~~) from 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 re-~~

~~quired to complete testing for an~~) prevents you from completing FSIQ testing.

(b) For impairment in adaptive skills, a score of more than two standard deviations below the mean 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)))~~ the medically intensive children's program, 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 under chapter 182-551 WAC.

(3) For ~~((WAC 388-823-0600(3)))~~ developmental delays, 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 under WAC 388-823-0770;

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

(c) You are under the age of ~~((ten))~~ 20 and have three or more developmental delays under WAC 388-823-0770.

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

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

(2) If you are determined eligible ~~((at age three but under age ten under))~~ with developmental delays ((or Down syndrome)) after your third birthday, your eligibility expires on your ~~((tenth))~~ 20th birthday.

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

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

(5) If ~~((you fail to reapply before your expiration date or if))~~ DDA receives your reapplication less than ~~((sixty))~~ 60 days before your expiration date and ~~((DDA))~~ does not have sufficient time to make an eligibility determination by the date of expiration, your DDA eligibility will expire and your DDA paid services will stop.

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

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

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

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

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))~~ 19 and:
(i) Your most recent eligibility determination was completed before your ~~((sixteenth))~~ 16th birthday; and
(ii) You are eligible with intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.

(b) If you are age ~~((nineteen))~~ 19 and ~~((were determined))~~ are eligible ~~((under))~~ with 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~~((+ -+))~~ .

~~((f))~~ (e) 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))~~ does not receive all of the documentation necessary to determine you are eligible during a review, DDA will terminate your eligibility:

(a) On your ~~((twentieth))~~ 20th birthday if the review is because you are age ~~((nineteen))~~ 19; or

(b) ~~((Ninety))~~ 90 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))~~ (iii) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.