



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: July 13, 2018

TIME: 12:42 PM

WSR 18-15-046

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The department is amending WAC 388-823-0600, WAC 388-823-0610, WAC 388-823-1005, and WAC 388-823-1010 in order to align with the definition of developmental disability under RCW 71A.10.020 and remove Developmental Disabilities Administration (DDA) eligibility as a barrier to accessing Medically Intensive Children Program (MICP) services under chapter 182-551 WAC. These amendments also ensure clients who became eligible for DDA due solely to MICP eligibility remain DDA eligible as long as they continue to receive fee-for-service MICP services. Finally, these amendments also simplify the review and expiration rules for clients turning twenty.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-823-0600, WAC 388-823-0610, WAC 388-823-1005, WAC 388-823-1010
- Suspended: None

Statutory authority for adoption: RCW 71A.12.030

Other authority: RCW 71A.10.020

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-11-124 on May 22, 2018 (date).
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>4</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>4</u>	Repealed	___

Date Adopted: July 13, 2018

Name: Katherine I. Vasquez

Title: DSHS Secretary

Signature:



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 August 13, 2018; 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.~~