



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 19, 2023

TIME: 9:10 AM

WSR 23-22-010

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

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) October 24, 2023

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

- Yes
- No
- If Yes, explain:

Purpose: DDA is enacting these changes on an emergency basis to prepare for implementation of House Bill 1407 (2023), which stipulates that DDA's rules must not "terminate or require redetermination of eligibility for a child under the age of 18 based solely on the child's age if the child has been determined to be eligible for services on or after the child's third birthday."

Citation of rules affected by this order:

- New:
- Repealed:
- Amended: WAC 388-823-0600, 388-823-0610, 388-823-1005, and 388-823-1010
- Suspended:

Statutory authority for adoption: RCW 34.05.350 and 71A.16.040

Other authority:

EMERGENCY RULE

- Under RCW 34.05.350 the agency for good cause finds:
- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 - That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Enacting these rules on an emergency basis is necessary in order to align DDA's eligibility review rules with amendments to RCW 71A.16.040, which are effective July 23, 2023. This is the second emergency filing on these sections and is necessary to keep the rules in effect until DDA completes the permanent rulemaking process. DDA is proceeding with permanent adoption and has filed a CR 102 under WSR 23-22-002.

**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Federal statute:	New	___	Amended	___	Repealed	___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 ____

The number of sections adopted on the agency's own initiative:

New ____ Amended ____ Repealed ____

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

New ____ Amended 4 Repealed ____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	____	Repealed	____

Date Adopted: October 19, 2023	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

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) 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 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 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 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 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, 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 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.

(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 your most recent eligibility determination was completed before your (~~sixteenth~~) 16th birthday unless you were determined eligible under developmental delay;

(b) If you are age (~~nineteen~~) 19 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~~) 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) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.