

WSR 21-09-054
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 16, 2021, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-21-095.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-823-0500 How do I show that I have autism as an eligible condition?, 388-823-0510 If I have autism, how do I meet the definition of substantial limitations?, and 388-823-0720 What evidence do I need of my FSIQ?

Hearing Location(s): On May 25, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. 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>; or by Skype. 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 than [than] May 26, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., May 25, 2021.

Assistance for Persons with Disabilities: Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by 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 full scale intelligence quotient (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, 71A.12.020, 71A.16.020.

Statute Being Implemented: RCW 71A.12.020, 71A.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310; 360-407-1589; Implementation and Enforcement: Will Nichol, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1583.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, 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.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required.

April 15, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4843.3

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.

[Statutory Authority: RCW 71A.16.020. WSR 19-19-061, § 388-823-0500, filed 9/16/19, effective 10/17/19. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0500, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0500, filed 6/1/05, effective 7/2/05.]

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.

[Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0510, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070,

71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0510, filed 6/1/05, effective 7/2/05.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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
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 <u>IV</u>	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
<u>Reynolds 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

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
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.

[Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0720, filed 5/29/14, effective 7/1/14.]