

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES**

Statutory Authority: 16 Delaware Code, Section 122 and 29 Delaware Code, Section 7909A(e) (16 Del.C. §122 & 29 Del.C. §7909A(e))
16 DE Admin. Code 2100

PROPOSED

PUBLIC NOTICE

2100 Eligibility Criteria

In compliance with 16 Del.C. §122 and 29 Del.C. §7909 A(e), Delaware Health and Social Services (DHSS)/ Division of Developmental Disabilities Services (DDDS) is proposing to amend the criteria for establishing eligibility for DDDS services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Office of Applicant Services, Division of Developmental Disabilities Services, 1052 South Governor's Avenue, Suite 101, Dover, Delaware 19904, by email to Lynda.Lord@delaware.gov or by fax to 302-744-9711 by 4:30 p.m. on September 1, 2022. Please identify in the subject line: Regulation Governing DDDS Eligibility Criteria. The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSED CHANGES

1. Provisional eligibility was added for applicants aged three through eight who may not have required assessment documentation to meet criteria
2. Updated terminology to clarify requirements for qualifying conditions, assessments, and the interpretation of assessment data
3. Added a criterion that addresses circumstances that allow eligibility without all required assessments
4. Detail added on citizenship
5. Clarified minimum age

2100 Eligibility Criteria

~~1.0 The Division of Developmental Disabilities Services provides services to those individuals with a developmental disability who meet all of the following criteria:~~

- ~~1.1 citizen or a lawful alien of the United States;~~
- ~~1.2 a resident of the State of Delaware;~~
- ~~1.3 a disability/disorder attributed to one or more of the following:~~
 - ~~1.3.1 Mental Retardation; defined as a significant generalized limitation in intellectual functioning. Significant generalized limitation in intellectual functioning is defined as IQ scores approximately two standard deviations below the mean. (American Association on Intellectual and Developmental Disabilities; Classification Manual, 2002); and/or~~
 - ~~1.3.2 Autistic Disorder (299.00; American Psychiatric Association; Diagnostic & Statistical Manual – IV, 1994); and/or~~
 - ~~1.3.3 Asperger's Disorder (299.80; American Psychiatric Association; Diagnostic & Statistical Manual – IV, 1994); and/or~~
 - ~~1.3.4 Prader-Willi Syndrome (documented medical diagnosis; World Health Organization; International Classification of Diseases – 9); and/or~~
 - ~~1.3.5 Brain injury or neurological condition related to mental retardation that meets: a) a significant generalized impairment in intellectual functioning (defined in 1.3.1); b) significant limitations in adaptive behavior functioning (defined in 1.4); and c) originates before age 22 (defined in 1.5);~~
- ~~1.4 significant limitations in adaptive behavior functioning;~~
 - ~~1.4.1 Significant limitations in adaptive behavior functioning is defined as performance that is at least two standard deviations below the mean of either:~~
 - ~~1.4.1.1 Score on a standardized measure of conceptual, social, or practical skills; or~~

- 1.4.1.2 Overall score on a standardized measure of conceptual, social and practical skills
- 1.5 the disability originates before age 22;
- 1.6 Any Individual who is receiving services on the effective date of these regulations who meets the requirements of 1.1 and 1.2 of this section and meets either the requirements of the regulations under which the individual initially established eligibility or the requirements of 1.3 through 1.5 shall be deemed eligible for services.

~~2.0 Intellectual functioning, adaptive behavior functioning, Autistic Disorder, and Asperger's Disorder shall be established and based on the use of standardized assessment instruments accepted by the Division.~~

1.0 Purpose

The purpose of the **16 DE Admin. Code 2100 Eligibility Criteria** is to set forth standards to determine an applicant's eligibility for the Division of Developmental Disabilities Services (DDDS) supports and services.

2.0 Eligibility Requirements

- 2.1 Eligibility is established by the following criteria, all of which must be met except when explicitly stated otherwise:
 - 2.1.1 Residency
 - 2.1.1.1 The applicant must be a resident of the State of Delaware; and
 - 2.1.1.2 The applicant must be a U.S. citizen or qualified alien according to DE Medicaid requirements (16 DE Admin. Code 14310).
 - 2.1.2 Age
 - 2.1.2.1 The applicant must have attained a minimum age of 3.
 - 2.1.2.2 The applicant must have documented evidence that the disability originated prior to the age of 22.
 - 2.1.2.3 DDDS may accept a comprehensive assessment and diagnosis of a qualifying condition by a licensed practitioner completed after age 22 after unsuccessful attempts to obtain assessments and records from the developmental period.
 - 2.1.3 Clinical Requirements
 - 2.1.3.1 The applicant must have a disabling condition that meets at least one of the following criteria:
 - 2.1.3.1.1 Intellectual Disability (ID), which can be caused by a brain injury or other neurologically disabling condition. An intellectual disability is characterized by significantly below-average general intellectual functioning with a valid intelligence quotient (IQ) or IQ-equivalent score of approximately 70 or below on a normed and standardized assessment;
 - 2.1.3.1.2 Autism Spectrum Disorder (ASD), as defined by the current version of the American Psychiatric Association's Diagnostic and Statistical Manual (DSM) determined through a comprehensive evaluation by a licensed practitioner or school psychologist, including a detailed developmental history that documents behavioral characteristics of ASD based on the current version of the DSM;
 - 2.1.3.1.3 Prader-Willi Syndrome diagnosis by a licensed practitioner.
 - 2.1.3.2 The applicant must also have significant limitations in adaptive behavior functioning which includes conceptual, social, and practical skills that are learned and performed by people in their everyday lives, as established by the following:
 - 2.1.3.2.1 Composite score of approximately 70 or below, or in at least one domain of a standardized adaptive behavior functioning assessment;
 - 2.1.3.2.2 When there are ratings from two different respondents, scores from different raters should be consistent and approximately 70 or below as a composite score or in at least one domain.
 - 2.1.4 Assessment Requirements
 - 2.1.4.1 Assessments must be performed by a licensed practitioner or school psychologist using the most recent editions of standardized assessments for the period accepted by the Division. Accepted standardized assessments are published on the DDDS website. DDDS may accept other assessments if they are comprehensive, structured, and use instruments that are normed and standardized.
 - 2.1.4.2 The assessment for ASD must include a detailed developmental history with evidence that behavioral characteristics of ASD (based on the current DSM) were present during the developmental period. A detailed developmental history interview is necessary because standardized measures to diagnose ASD retrospectively do not exist.

3.0 Exception to Clinical Requirements for Applicants Aged Three Through Age Eight

- 3.1 If the requirements in subsection 2.1.3 cannot be met for an applicant aged three through eight, provisional eligibility may be granted with clinical documentation to support a minimum of one of the following conditions:
 - 3.1.1 There exists the possibility of a qualifying condition listed in subsection 2.1.3, however, additional assessment is required; or
 - 3.1.2 A minimum of two delays in the following developmental domains:
 - 3.1.2.1 Cognition;
 - 3.1.2.2 Communication (expressive or receptive);
 - 3.1.2.3 Physical (gross or fine motor);
 - 3.1.2.4 Social;
 - 3.1.2.5 Emotional;
 - 3.1.2.6 Adaptive behavior; or
 - 3.1.3 A diagnosed congenital or acquired condition with documentation that indicates that the condition results in a high probability of a future intellectual/developmental disability as an alternative to those described in subsection 2.1.3.
- 3.2 When the applicant reaches age 9, provisional eligibility ends and assessments must support a disabling condition as defined in subsection 2.1.3.

4.0 Eligibility Determined Without All Documentation

- 4.1 In cases of bona fide extraordinary or exigent circumstances, DDDS may determine eligibility without one or more of the required pieces of documentation.
- 4.2 If eligibility is determined without the required documentation, DDDS reserves the right to redetermine eligibility if such documentation becomes available later.

5.0 Review of Updated Assessments and Redetermination of Eligibility

Until an individual reaches the age of 22, DDDS reserves the right to review updated assessments and redetermine eligibility at any time, including requiring additional testing that must be completed prior to the age of 22.

4 DE Reg. 228 (07/01/00)

11 DE Reg. 1237 (03/01/08)

26 DE Reg. 89 (08/01/22) (Prop.)