

**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

**FINAL**

**ORDER**

**2100 Eligibility Criteria**

**NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services (DHSS) / Division of Developmental Disabilities Services (DDDS) initiated proceedings to adopt revised regulations governing the criteria for establishing eligibility for DDDS services. The DHSS proceedings to amend its regulations were initiated pursuant to 16 **Del.C. §122** and 29 **Del.C. §7909A(e)**.

DHSS published its notice of proposed regulation changes pursuant to 16 **Del.C. §122** and 29 **Del.C. §7909A(e)** in the August 1, 2022, *Delaware Register of Regulations* (Volume 26, Issue 2). It requested that written materials and suggestions from the public concerning the proposed regulations be delivered by September 1, 2022, at which time DHSS would review information, factual evidence, and public comment to the proposed changes to the regulation.

**SUMMARY OF PROPOSAL**

Effective for services provided on and after November 11, 2022, DHSS/DDDS proposes to amend the eligibility criteria used in the determination of process for DDDS services.

**Statutory Authority**

16 Delaware Code, Section 122 and 29 Delaware Code, Section 7909A(e) (16 **Del.C. §122 & 29 Del.C. §7909A(e)**)

**Purpose**

The Division of Developmental Disabilities Services proposed a number of key amendments to its eligibility criteria to provide updates to language and terminology and clarify areas involving assessment, age, citizenship status, and the very young applicant without all of the required assessment information.

**Fiscal Impact**

None

**Summary of Comments Received with Agency Responses**

The Division received comments from two organizations. The State Council for Persons with Disabilities (SCPD) and the Governor's Advisory Council for Exceptional Citizens (GACEC) offered the following summarized comments:

**Comment - updated terminology:** GACEC and SCPD expressed appreciation for the removal of outdated terminology and the inclusion of current diagnostic clarifications and People First language.

**Agency Response:** DDDS thanks the GACEC and the SCPD for their support updating language and terminology.

**Comment - non-citizen residency:** Two comments were provided related to access to services for those that are non-citizen residents:

1. GACEC and SCPD recommended DDDS clarify in the regulation that the five-year bar, which qualified aliens are subjected to before eligibility for Medicaid services, does not apply to non-Medicaid DDDS services and would not be a barrier to DDDS eligibility.

2. SCPD and GACEC also recommended that DDDS include lawfully residing non-qualified aliens covered by §14350.

**Agency Response:** DDDS appreciates the clarifications requested. The Division has included more specific language to address the concerns related to the five-year bar to make it clear that this does not apply to non-Medicaid DDDS services. With regards to the second comment, DDDS acknowledges, and appreciates, this suggestion, but will not pursue this change at this time.

**Comment - Changes related to age for eligibility:** The Division proposed three changes: inclusion of the minimum age for services, provisional eligibility for applicants aged 3 through 8, and increased flexibility when records before age 22 are unavailable. GACEC and SCPD expressed support of the second two changes.

**Agency Response:** DDDS is aware of the services provided to individuals by the State in the birth to three age group and

does not want a duplication of services.

**Comment - Clinical criteria:** GACEC and SCPD requested clarification of the subsections under 2.1.3.2 (adaptive functioning).

**Agency Response:** DDDS added clarifying language and punctuation.

**Comment - Future eligibility considerations:** GACEC and SCPD recommended that DDDS explore moving towards an approach to eligibility focused more exclusively on functional needs.

**Agency Response:** DDDS appreciates the comment and will take this into consideration for the future.

**Comment - Updates to eligibility assessments:** GACEC and SCPD supported the changes in the proposed regulation that allow DDDS to update acceptable assessments without the regulatory notice and comment process. This would allow them to respond in a more timely manner to changes in nationally accepted assessments.

**Agency Response:** DDDS acknowledges the support of this change.

**Comment - Eligibility determined without all documentation:** GACEC and SCPD supported this provision, as it would permit DDDS to act in extraordinary circumstances, even if they do not have all the documentation needed.

**Agency Response:** DDDS acknowledges the support of this change.

DDDS is appreciative of the thoughtful input received and looks forward to continuing to work with our partners in the provision of services for individuals with intellectual and developmental disabilities in Delaware.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the August 2022 *Register of Regulations*, and amended as indicated herein, should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Developmental Disabilities Services eligibility criteria, is adopted and shall be final effective November 11, 2022.

10/14/2022  
Date of Signature

Molly Magarik, Secretary, DHSS

### 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**). **[The five-year bar, which qualified aliens are subjected to before Medicaid eligibility, does not apply to non-Medicaid DDDS services.]**

### **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 Score]** of approximately 70 or below, **[on the composite score]** or in at least one domain of a standardized adaptive behavior functioning **[assessment; assessment.]**

**2.1.3.2.2** **[When If]** there are ratings from two different respondents, scores from different raters should be consistent **[with one another]** and approximately 70 or below as **[a composite score or in at least one domain noted in section 2.1.3.2.1]**.

### **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. 391 (11/01/22) (Final)**