

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Statutory Authority: 29 Delaware Code, Section 7903 (29 **Del.C.** §7903)

PROPOSED

PUBLIC NOTICE

2100 Eligibility Criteria

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 29, 7903(10) and 7909A(e) of the Delaware Code, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Services proposes to amend their criteria for establishing eligibility related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Anderson, DDDS, 101 Boyd Boulevard, 26351 Patriot's Way, Georgetown, DE 19947, or by fax to (302) 934-8707 **Division of Developmental Disabilities Services Eligibility Criteria Regulation** by December 31, 2008.

The action concerning the determination of whether to adopt the proposed regulation 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

The Division of Developmental Disabilities Services proposes the following revisions to their criteria for eligibility:

1. Requires financial eligibility for Medicaid Waiver services (new section 1.6);
2. Requires an applicant to meet Intermediate Care Facility/Mental Retardation Level of Care requirements (new section 1.7);
3. Adds new section 1.8 to include proposed sections 1.6 and 1.7 in terms of grandfathering current recipients, adding language that any individual who does not meet the requirements of 1.3 through proposed 1.7 shall be eligible only for the non-Medicaid services offered by DDDS on the effective date of these regulations;
4. Renumbers current regulations to accommodate proposed changes.

Statutory Authority

- 29 **Del.C.**, subsection 7903 (10);
- 29 **Del.C.**, subsection 7909 A(e)

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 The applicant is financially eligible (income/assets) for DDDS Medicaid Waiver programs and services and;
- 1.7 Meets Level of Care requirements for Intermediate Care Facility/Mental Retardation (ICF/MR).
- 1.8 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, provided however, that any individual who does not meet the requirements of 1.3 through 1.7 shall be eligible only for the non-Medicaid services offered by DDDS on the effective date of these regulations.

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.

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

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

12 DE Reg. 738 (12/01/08) (Prop.)