



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

August 31, 2022

Lynda Lord, Director of Professional Services
Office of Applicant Services
Division of Developmental Disabilities Services
1052 South Governor's Avenue, Suite 101
Dover, Delaware 19904

RE: 26 DE Reg. 89 [DDDS Proposed Defining Eligibility Criteria Regulation (August 1, 2022)]

Dear Ms. Lord:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Developmental Disabilities Services (DDDS) proposal to modify the section establishing eligibility criteria for DDDS. Council **supports** the proposed modifications; however, we would like to share the following recommendations.

First, in the Updated terminology section, Council would like to note that we appreciate the removal of outdated terminology and the inclusion of current diagnostic classifications and People First language.

Second, Council notes that the regulation changes non-citizen residency from "a lawful alien of the United States" to "qualified alien according to DE Medicaid Requirements," referencing 16 DE Admin. Code §14310, which utilizes an existing Medicaid regulation's definition to establish eligibility. This change in order to be consistent with Medicaid terminology and definitions will make interpretation clearer, especially for individuals seeking long-term care/Medicaid waiver services. Council would recommend that 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 is not a barrier to DDDS eligibility.

Third, Council would also recommend that DDDS include lawfully residing nonqualified aliens covered by §14350.

Fourth, Council notes and supports the two changes with respect to age. Allowing eligibility for potential service recipients between the age of three and eight who have not yet received diagnoses under certain circumstances and adding a minimum age of three could help younger children start DDDS services sooner.

Fifth, Council notes that the clinical criteria was consolidated in the proposed regulation. Intellectual disability and brain injury now share the same clinical requirements. The regulation now requires an IQ or equivalent score of approximately 70 or below, rather than scores. The proposed regulation removes Asperger's Syndrome and lists only Autism Spectrum Disorder. The adaptive functioning requirements were also updated to require either composite scores of approximately 70 or below, or in at least one domain, and clarifies what to do when there are multiple responders. However the way the subsections under 2.1.3.2 (adaptive functioning) appear is a bit unclear based on the phrase "as established by the following" and two subsections separated by a semi-colon, implying they both are required, when the second subsection may not apply. Council would like clarification on this section.

Sixth, this regulation does allow for some flexibility with the criteria; however it continues to use a score driven approach rather than a functional approach. A functional approach is more inclusive and would help to include some individuals who test too high for eligibility, but whose functioning is equivalent to other individuals who are eligible for DDDS services. Council encourages DDDS to explore moving to a functional approach in the future.

Seventh, Council supports changes in the criteria, which allow DDDS to update acceptable assessments without the regulatory notice and comment process. This would allow them to respond more timely to changes in nationally accepted assessments.

Eighth, the proposed regulation adds in a provision in cases of "bona fide extraordinary or exigent circumstances" that DDDS may determine eligibility without some of the required documentation, reserving the right to re-determine eligibility if such documentation is located later. Council supports this provision, as it would permit DDDS to act in extraordinary circumstances, even if they do not initially have all of the documentation needed.

Thank you for your time and consideration of our support and recommendations. Please feel free to contact Pam Weir or me should you have any questions on our comments.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc

CC: Marissa Catalon, DDDS Director
Jody Roberts, DDDS