



1. TITLE OF RULE FILING:

**Disability Services-Developmental Services**

2. ADOPTING AGENCY:

Agency of Human Services (AHS); Department of  
Disabilities, Aging, and Independent Living (DAIL)

3. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Clare McFadden

Agency: Department of Disabilities, Aging and  
Independent Living/Developmental Disabilities Services  
Division (DAIL/DDSD)

Mailing Address: 280 State Drive, Waterbury, VT 05671-2030

Telephone: (802) 585-5396 Fax: (802) 241-0410

E-Mail: clare.mcfadden@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*: [www.dail.vermont.gov](http://www.dail.vermont.gov)

4. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Stuart Schurr, General Counsel

Agency: Department of Disabilities, Aging, and  
Independent Living

Mailing Address: 280 State Drive, HC2 South, Waterbury, VT  
05671-2020

Telephone: (802) 241-0353 Fax: (802) 241-0386

E-Mail: [stuart.schurr@vermont.gov](mailto:stuart.schurr@vermont.gov)

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

1 V.S.A. § 317 (c) (1): Records that by law are designated confidential or by a similar term are exempt from public inspection and copying.

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

18 V.S.A. § 8728 affords every person with a developmental disability and every family who receives services the right to privacy and confidentiality.

**6. LEGAL AUTHORITY / ENABLING LEGISLATION:**

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

18 V.S.A. § 8726

**7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:**

18 V.S.A. § 8726 requires DAIL to adopt rules necessary to carry out the requirements of the Developmental Disabilities Act of 1996 (DD Act), 18 V.S.A. Chapter 204A.

**8. CONCISE SUMMARY (150 WORDS OR LESS):**

The purpose of this rule is to fulfill the requirements of the Developmental Disabilities Act (DD Act), to include specific details for its implementation. The effective date of the last adopted rule was October 1, 2017. Since then, 2022 Acts and Resolves No. 186 eliminated the requirement in 18 V.S.A. § 8725 that certain categories of the Developmental Services System of Care Plan be adopted by rule. Further, the federal rules relating to Medicaid grievances and appeals have been amended. Finally, the Vermont Supreme Court's decision in *In re: R.R.*, 2019 VT 31, requires that the Standard Error of Measurement (SEM) for IQ tests, including IQ scores of 75 or below, be considered when determining eligibility for services. The proposed language includes IQ scores of 75 or below when accounting for the SEM. Other amendments to the rule include formatting, as well as updates to align with current practice in the administration of the Developmental Services program.

**9. EXPLANATION OF WHY THE RULE IS NECESSARY:**

The rule is necessary to comply with the requirements in 18 V.S.A. § 8726.

**10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13)(A):**

The proposed language adheres to the requirements set forth in 18 V.S.A. § 8726 and Health Care Administrative Rule 8.100 and codifies the Vermont Supreme Court's decision in *In re: R.R.*, 2019 VT 31. The decision to include such language would make sense to a reasonable person.

## 11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Individuals with developmental disabilities, their family members and guardians; Vermont Legal Aid-Disability Law Project; Green Mountain Self-Advocates; advocates representing the interests of people with autism; providers, including Vermont Care Partners, designated agencies, and specialized service agencies; the VT Developmental Disabilities Council; the Developmental Disabilities Services (DDS) State Program Standing Committee; Vermont Family Network; Federation for Children and Families; University of Vermont Center for Disability and Community Inclusion; AHS; and DAIL

## 12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The proposed changes to the eligibility criteria for people ages six and up have the potential for increasing the number of people who are eligible for DDS, placing increased pressure on the DAIL/DDSD budget to serve additional people. In response to *In re: R.R.*, 2019 VT 31, DDSD has adjusted its threshold for eligibility from an IQ score of 70 to 75 when accounting for the SEM. Since then, an average of one additional person per month has received Home and Community-Based Services (HCBS) based upon this change, for an average annual cost of \$472,727 as of February 2022. This increase has already been factored into the budgeting process for DAIL. The Office of Public Guardian (OPG), within DDSD, may experience increased referrals for people in need of guardianship, which, over time, could require additional OPG staff. Finally, access to services may have a positive financial impact on some family caregivers by enabling them to enter the workforce or increase their work hours.

## 13. A HEARING WILL BE SCHEDULED.

IF A HEARING WILL NOT BE SCHEDULED, PLEASE EXPLAIN WHY.

## 14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 10/11/2022  
Time: 10:00 AM  
Street Address: virtual: see attached  
Zip Code:

Date: 10/19/2022  
Time: 04:00 PM  
Street Address: virtual: see attached  
Zip Code:

Date:  
Time: AM  
Street Address:  
Zip Code:

Date:  
Time: AM  
Street Address:  
Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 10/28/2022

16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

system of care plan

developmental disabilities

developmental services

eligibility

Department of Disabilities, Aging, and Independent Living

## Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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#### 2. ADOPTING AGENCY:

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#### 3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

#### 4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log#: 17-052, Regulations Implementing the Developmental Disabilities Act of 1996, October 1, 2017.

## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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#### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Those potentially affected by the adoption of this rule include:

Individuals with developmental disabilities and their families, who may benefit from the expansion of the eligibility criteria for accessing services. DAIL has already made the change in eligibility criteria, which

has resulted in an average of one (1) additional person per month receiving Home and Community-Based Services, at an annual benefit of \$39,393 per person. There are several other smaller programs in DDS, for which 18 additional people have become eligible since 2019. The costs for these services are negligible and have been absorbed into the existing programs.

Developmental Disabilities Services providers (i.e., Designated and Specialized Services Agencies), which are paid to provide these services. While additional revenue is generally viewed positively by providers, they are currently experiencing unprecedented staff shortages, making the delivery of these additional services a challenge. It is unclear if and when these staffing issues will be resolved.

The proposed changes to the eligibility criteria for people ages six and up have the potential for increasing the number of people who are eligible for DDS, which would place increased pressure on the DDS budget to serve additional people. In response to In re: R.R., 2019 VT 31, DAILE has adjusted its threshold for eligibility from an IQ score of 70 to 75 when accounting for the SEM. DAILE has been monitoring the economic impact of this change in practice since then. An average of one (1) additional person per month has received Home- and Community-Based Services based upon this change, for an average annual cost of \$472,727 as of February, 2022. This increase is has already been factored into the budgeting process for DDS. DDS has not tracked the costs to serve additional people in some of its smaller programs. The dollar amounts are negligible, and the additional people were served within existing budgets. It is difficult to predict with certainty whether there will be a significant increase in applications for services based upon the change in eligibility criteria, but the data currently available to DAILE indicate that the impact will not be significant. For context, the average annual increase of \$474,727 is .19% of the \$253 million DDS FY22 budget. The Office of Public Guardian (OPG), within DDS, may experience increased referrals for people in



need of guardianship. Over time, additional OPG staff may be needed to support an increased caseload. Finally, access to services may have a positive financial impact on some family caregivers by enabling them to enter the workforce or increase their work hours.

**4. IMPACT ON SCHOOLS:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

No impact on schools or taxpayers as a result of the change to this rule is anticipated.

**5. ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

Not applicable, as no impact on local school districts from the changes to the regulations is anticipated.

**6. IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

To the extent that Designated Agencies and Specialized Services Agencies may be considered small businesses, the changes in eligibility criteria could, in light of unprecedented staffing shortages, make the delivery of additional services a challenge. No other impact on small businesses is anticipated.

**7. SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

Designated Agencies are required to serve all eligible consumers in their geographic area and, as such, cannot reduce the burden of compliance. No other impact on small businesses is anticipated.

**8. COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

There are no alternatives to the adoption of the rule. Having no rule would violate the DD Act requirement, as set forth in 18 V.S.A. § 8726, to adopt rules for the administration of the Developmental Disabilities Services system.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

DDSD utilized internal data collection to track the impact of expanding the eligibility criteria. Data were collected in collaboration with provider agencies. Beyond that impact, as noted more fully above, the rule neither increases nor reduces an economic burden on any other person or entity.

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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3. **GREENHOUSE GAS:** *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*  
No impact is anticipated.

4. **WATER:** *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*  
No impact is anticipated.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*  
No impact is anticipated.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*  
No impact is anticipated.
7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*  
No impact is anticipated.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*  
No impact is anticipated.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*  
The proposed expansion of eligibility for the provision of community-based care to individuals with disabilities is not anticipated to have an environmental impact.

## Public Input Maximization Plan

### **Instructions:**

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

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3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

On March 10, 2022, the Commissioner of DAIL distributed to the members of the State Program Standing Committee (SPSC), the advisory board established in 18 V.S.A. § 8733, an initial draft of the proposed rule, for advice and recommendations. As requested by the advisory board in February, 2022, a plain language document explaining the proposed changes was developed and shared with the board on March 10, 2022. During the SPSC meeting on March 17, 2022, DAIL staff and the SPSC members reviewed and discussed the draft. The SPSC members offered comments and suggested some changes. The SPSC was given an additional 30 days to provide any additional advice or recommendations in writing to DAIL. On April 18, 2022, Vermont Legal Aid (VLA), which is represented on the SPSC, submitted to DAIL a number of recommended changes to the proposed draft. No other written comments were received from the SPSC. The recommendations from VLA and the SPSC were reviewed by

## Public Input

DAIL staff, and a number of them were adopted and incorporated into the proposed rule.

Following ICAR review, the proposed rule will be filed with the Secretary of State's Office, at which time DAIL will send information regarding the proposed rule and public comment period to the following organizations: Vermont Care Partners, Developmental Disabilities Services Agency Directors, Designated Agency Executive Directors, the DDS State Program Standing Committee, Vermont Family Network, Green Mountain Self-Advocates, the DAIL Advisory Board, Vermont Coalition of Disability Rights, Vermont Legal Aid, Vermont Developmental Disabilities Council, and Vermont Center for Independent Living. The proposed rule will be posted on the DAIL website, and at least one (1) public hearing will be held. In addition, DAIL will invite the public to submit written comments on the rule during the public comment period.

#### **4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Prior to drafting the proposed rule changes, DAIL consulted with two licensed psychologists with expertise in the diagnosis of intellectual disability. DAIL also met with Agency of Education staff involved with early education programs for children under age 6. The purpose was to align eligibility criteria to the extent feasible to streamline processes for families across state programs. DAIL also met with staff from provider agencies to get feedback on a draft of the proposed changes. After receiving comments during the public comment period, DAIL will continue its dialogue with the State Program Standing Committee, the provider agencies, Green Mountain Self-Advocates, the DD Council and, as necessary, other stakeholders to try to reach consensus on the content of the rule.