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Document No. 5040
DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS
CHAPTER 88
Statutory Authority: 1976 Code Section 44-20-220

Article 5. Eligibility Determination. (New)

Preamble:

The Department of Disabilities and Special Needs proposes to add Article 5 to provide the procedure establishing eligibility within the scope of state funded services provided by the Department of Disabilities and Special Needs.

Section-by-Section Discussion

88-505. General. New.

88-510. Definitions Used in this Article. New.

88-515. Diagnostic Criteria for Department Eligibility. New.

A. Intellectual Disability. New.

B. Related Disability. New.

C. High-Risk Infant/At Risk Child. New.

D. Autism Spectrum Disorder. New.

E. Head and Spinal Cord Injury and Similar Disability. New.

88-520. Time Limitations. New.

A Notice of Drafting was published in the *State Register* on December 25, 2020.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, such hearing will be conducted before the Department of Disabilities and Special Needs Commission, 3440 Harden Street Extension, Columbia, South Carolina, 29240 on April 15, 2021, thirty minutes after the adjournment of the regular Commission meeting. Written comments may be directed to Mary Poole, State Director, Department of Disabilities and Special Needs, 3440 Harden Street Extension, Post Office Box 4706, Columbia, South Carolina, 29240, no later than 5:00 p.m., March 29, 2021. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There will be no increased cost to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION:

Purpose: This article is added to provide the procedure establishing eligibility within the scope of state funded services provided by the Department of Disabilities and Special Needs.

Legal Authority: 1976 Code Section 44-20-220.

Plan for Implementation: The added regulations will take effect upon approval by the General Assembly and upon publication in the State Register. The Department will notify applicants for services of the regulation by posting it on the agency's web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed regulations are needed to ensure that all applicants for services are aware of the process and their rights.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no effect on the environment of this state. The public health of the State will be enhanced by public awareness of Department procedures.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no detrimental effects on the environment and public health if the regulations are not implemented in this State.

Statement of Rationale:

These regulations are added to clarify and state Department procedures.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

ARTICLE 5
ELIGIBILITY DETERMINATION

88-505. General.

A. Individuals domiciled in the state and determined by the Department, using the diagnostic criteria specified in this Article, to have an Intellectual Disability, Related Disability, Autism Spectrum Disorder, Head Injury, Spinal Cord Injury, Similar Disability, or be a child at greater risk for a developmental disability than that for the general population, will be eligible for services from the Department.

88-510. Definitions Used in this Article.

A. At Risk Child: Defined as a child 36 of age up to but less than 72 months of age whose genetic, medical or environmental history is predictive of a substantially greater risk for a developmental disability than that of the general population.

B. Autism Spectrum Disorder: The Department defines Autism Spectrum Disorder (ASD) as included in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) or most current edition.

C. Developmental Period: The period of time between conception and the twenty-second birthday.

D. Head Injury: S.C. Code Ann. § 44-38-20, which relates to the South Carolina Head and Spinal Cord Information System, defines head injury. Head Injury means an insult to the skull or brain, not of a degenerative or congenital nature, but one caused by an external physical force that may produce a diminished or altered state of consciousness, which results in impairment of cognitive abilities or physical functioning and possibly in behavioral or emotional functioning. It does not include cerebral vascular accidents or aneurysms.

E. High-Risk Infant: S.C. Code Ann. § 44-20-30 (9) defines high-risk infant as a child less than 36 months of age whose genetic, medical or environmental history is predictive of a substantially greater risk for a developmental disability than that for the general population.

F. Intellectual Disability: S.C. Code Ann. § 44-20-30 (12) defines Intellectual Disability as significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

G. Related Disability: S.C. Code Ann. § 44-20-30 (15) defines Related Disability as a severe, chronic condition found to be closely related to Intellectual Disability or to require treatment similar to that required for persons with Intellectual Disability.

H. Similar Disability: Similar Disability is not specifically defined within South Carolina Codes of Law; however, S.C. Code Ann. § 44-38-370 states that Similar Disability is not associated with the process of a progressive degenerative illness or dementia, or a neurological disorder related to aging. Similar Disability is similar to head injury or spinal cord injury as defined herein.

I. Spinal Cord Injury: S.C. Code Ann. § 44-38-20, which relates to the South Carolina Head and Spinal Cord Information System, defines and spinal cord injury. Spinal Cord Injury means an acute traumatic lesion of neural elements in the spinal canal resulting in any degree of sensory deficit, motor deficit, or major life functions. The deficit or dysfunction may be temporary or permanent.

88-515. Diagnostic Criteria for Department Eligibility.

A. Intellectual Disability

(1) The Department defines Intellectual Disability as outlined in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (DSM-5) or most current edition.

(2) Diagnosis of Intellectual Disability based on the DSM-5 or most current edition definition requires the following three (3) criteria be met:

(a) Significantly sub-average intellectual functioning; an IQ of approximately 70 or below on an individually administered intelligence test (for infants, a clinical judgment of significantly sub-average intellectual functioning); and,

(b) Concurrent deficits in present overall adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his/her age by his/her cultural group) with deficits in at least two (2) of the following adaptive skills areas: Communication, Self-care, Home living, Social/interpersonal skills, Use of community resources, Self-direction, Functional academic skills, Work, Leisure, Health, and safety; and,

(c) The onset of Intellectual Disability is prior to age 22.

(3) Only scores derived from nationally normed standardized tests conducted by qualified examiners shall be used in eligibility determinations. A score of 70, alone, on any intelligence and/or adaptive test shall not equate to a diagnosis of Intellectual Disability.

B. Related Disability

(1) Diagnosis of Related Disability requires all four (4) of the following conditions:

(a) It is attributable to cerebral palsy, epilepsy, or any other condition other than mental illness found to be closely related to Intellectual Disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with Intellectual Disability and requires treatment or services similar to those required for these persons; and

(b) It is likely to continue indefinitely; and,

(c) It results in substantial functional limitations in three (3) or more of the following areas of major life activity: Self-care, Understanding and use of language, Learning, Mobility, Self-direction, Capacity for Independent Living; and

(d) The onset is before age 22 years.

(2) Only scores derived from nationally normed standardized tests administered by qualified examiners shall be used in eligibility determinations. Substantial functional limitations shall be defined as the results from administration of a standardized, norm-referenced test yielding a composite score of two standard deviations or more below the mean.

C. High-Risk Infant/At Risk Child

(1) Diagnosis of High Risk Infant/At Risk Child requires that a child younger than 72 months of age meet one of the following:

(a) Exhibits significant documented delays in three or more areas of development; or

(b) Have a diagnosis, as recognized by the Department of Health and Human Services BabyNet Established Risk Condition List, confirmed by a medical professional and exhibit significant documented delays in two areas of development.

D. Autism Spectrum Disorder

(1) Diagnosis of ASD based on the (DSM-5) requires that the results from a battery of ASD specific assessments confirm:

(a) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following three (3) criteria, currently or by history:

(i) Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.

(ii) Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.

(iii) Deficits in developing, maintaining, and understanding relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.

(2) Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history:

(a) Stereo-typed or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).

(b) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

(c) Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).

(d) Hyper- or hypo-reactivity to sensory input or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).

(3) Symptoms are present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life).

(4) Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.

(5) These disturbances are not better explained by Intellectual Disability (Intellectual Developmental Disorder) or global developmental delay. Intellectual Disability and Autism Spectrum Disorder frequently co-occur; to make comorbid diagnoses of Autism Spectrum Disorder and Intellectual Disability, social communication should be below that expected for general developmental level.

E. Head and Spinal Cord Injury and Similar Disability

(1) Diagnosis of Head or Spinal Cord Injury or Similar Disability requires:

(a) Medical documentation and functional/adaptive assessments to substantiate that Traumatic Brain Injury, Spinal Cord Injury or Similar Disability occurred and produced ongoing substantial functional limitations. Including documentation of pre-existing/concurrent conditions, which impact functioning.

(b) The person has a severe chronic limitation that:

(i) Is attributed to a physical impairment, including head injury, spinal cord injury or both, or a similar disability, regardless of the age of onset, but not associated with the process of a progressive degenerative illness or disease, dementia, or a neurological disorder related to aging;

(ii) Is likely to continue indefinitely without intervention;

(iii) Results in substantial functional limitation in at least two (2) of these life activities: Self-care;

(iv) Receptive and expressive communication; Learning; Mobility; Self-direction; Capacity for independent living; Economic self-sufficiency; and,

(v) Reflects the person's need for a combination and sequence of special interdisciplinary or generic care or treatment or other services, which are of lifelong or extended duration.

88-520. Time Limitations.

A. Department eligibility may be established in a time-limited fashion as determined by the circumstances of the individual applying for eligibility. All information received by the Department will be reviewed for reliability and validity in the determination of eligibility.