

New Subchapter Governing
Diagnostic Assessment
Chapter 5, Subchapter D

EFFECTIVE DATE: November 15, 2015

Please remove Chapter 415, Subchapter D, governing Diagnostic Eligibility for Services and Supports – Mental Retardation Priority Population and Related Conditions, with an effective date of March 31, 2002, from your collection of DADS policies and replace it with this document.

Reason for new subchapter

The new rules eliminate use of the term "TDMHMR-certified psychologist" in response to H.B. 807 of the 83rd Legislature, 2013. The term has been replaced with "certified authorized provider."

Significant revisions upon adoption

The new rules:

- revise the definition of priority population to use the term autism spectrum disorder instead of pervasive developmental disorder to be consistent with the *DSM V*;
- revise the criteria to be used and the process to be followed by DADS to approve an employee of a LIDDA or SSLC as a certified authorized provider; and
- allow a LIDDA or an SSLC to apply to DADS for an employee to be designated as a certified authorized provider if the employee is designated as a certified authorized provider or a TDMHMR-certified psychologist with another LIDDA or SSLC.

Process

The new rules were proposed for public comment in the July 17, 2015, issue of the *Texas Register*. The adoption is published in the November 13, 2015, issue of the *Texas Register*.

Questions

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**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT**

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page</u>
§5.151.	Purpose.	1
§5.153.	Definitions.	1
§5.154.	Use of Information from a Diagnostic Assessment.	3
§5.155.	Determination of Intellectual Disability (DID)	3
§5.156.	Review and Endorsement of a DID.....	5
§5.157.	Autism Spectrum Disorder (ASD).....	5
§5.158.	Related Condition (RC).	6
§5.161.	Certified Authorized Provider.....	6

§5.151. Purpose.

Effective: November 15, 2015

The purpose of this subchapter is to describe the criteria to be used and the process to be followed:

(1) by an authorized provider employed by or contracting with a local intellectual and developmental disability authority (LIDDA) or a state supported living center (SSLC), to conduct a diagnostic assessment for intellectual disability, autism spectrum disorder (ASD), and a related condition;

(2) by a LIDDA or SSLC, to review a determination of intellectual disability or a diagnosis of ASD, or related condition for endorsement; and

(3) by DADS, to approve an employee of a LIDDA or an SSLC as a certified authorized provider.

§5.153. Definitions.

Effective: November 15, 2015

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Adaptive behavior** -- The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(2) **Adaptive behavior level** -- The categorization of an individual's functioning level of adaptive behavior into one of four levels ranging from mild limitations (I) through profound limitations (IV).

(3) **ASD** -- Autism spectrum disorder. As described in the *DSM-5*, a disorder characterized by persistent impairment in reciprocal social communication and social interaction, and restricted, repetitive patterns of behavior, interests, or activities. These symptoms are present from early childhood and limit or impair everyday functioning.

(4) **Authorized provider** -- A person who is:

(A) a physician licensed to practice in Texas;

(B) a psychologist licensed to practice in Texas; or

(C) a certified authorized provider.

(5) **Certified authorized provider** -- A person who is designated in accordance with §5.161 of this subchapter (relating to Certified Authorized Provider).

(6) **Commissioner** -- The commissioner of DADS.

(7) **DADS** -- The Department of Aging and Disability Services.

(8) **Developmental period** -- The period of time between birth and 18 years of age.

(9) **Diagnostic assessment** -- An assessment, including a DID, conducted to determine if an individual meets the criteria for a diagnosis of intellectual disability, autism spectrum disorder, or a related condition.

(10) **DID (determination of intellectual disability)** -- An assessment conducted in accordance with §5.155 of this title (relating to Determination of Intellectual Disability (DID)) by an authorized provider to determine if an individual meets the criteria for a diagnosis of intellectual disability.

(11) **DSM** -- The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

(12) **Individual** -- A person who is the subject of a diagnostic assessment or who has been determined to be in the LIDDA priority population.

(13) **Intellectual disability** -- Consistent with THSC, §591.003, significantly subaverage general intellectual functioning

**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT**

existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(14) **LAR (legally authorized representative)** -- A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may be a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, or a personal representative of a deceased individual.

(15) **LIDDA** -- Local intellectual and developmental disability authority. An entity designated in accordance with THSC §533.035(a).

(16) **LIDDA services** -- Services provided by or through a LIDDA that are funded with general revenue pursuant to a performance contract with DADS.

(17) **LIDDA priority population** -- A group comprised of persons who meet one or more of the following descriptions:

(A) a person with an intellectual disability;

(B) a person with autism spectrum disorder;

(C) a person with a related condition on the DADS-approved list of related conditions who is eligible for and enrolling in services in the Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID) Program, the Home and Community-based Services (HCS) Program, or the Texas Home Living (TxHmL) Program;

(D) a nursing facility resident who is eligible for specialized services for an intellectual disability or a related condition pursuant to §1919(e)(7) of the Social Security Act (United States Code, Title 42, §1396r(e)(7));

(E) a child who is eligible for Early Childhood Intervention services through the Department of Assistive and Rehabilitative Services; or

(F) a person diagnosed by an authorized provider as having a pervasive developmental disorder through a diagnostic assessment completed before November 15, 2015.

(18) **Pervasive development disorder**

-- A severe and pervasive impairment in the developmental areas of reciprocal social interaction skills or communication skills, or the presence of stereotyped behaviors, interests, and activities manifested during the developmental period, usually before 10 years of age.

(19) **Related condition** -- As defined in the Code of Federal Regulations (CFR), Title 42, §435.1010, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an intellectual disability, and requires treatment or services similar to those required for those persons with an intellectual disability;

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(20) **Residential care facility** -- A facility defined in THSC, §591.003.

(21) **Significantly subaverage general intellectual functioning** -- Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(22) **SSLC** -- State supported living center. A facility operated by DADS, including the intermediate care facility for individuals with an intellectual disability component of the Rio

**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT**

Grande State Center, that provides services, including residential services, to individuals with a profound or severe intellectual disability or an intellectual disability with intensive medical or behavioral needs.

(23) **THSC** -- Texas Health and Safety Code.

§5.154. Use of Information from a Diagnostic Assessment.

Effective: November 15, 2015

(a) A LIDDA uses information from a DID or endorsement of a DID conducted in accordance with this subchapter to determine an individual's eligibility for LIDDA services.

(b) DADS uses information from a DID or endorsement of a DID conducted in accordance with this subchapter to determine an individual's eligibility for certain services and supports provided through DADS or the Health and Human Services Commission.

(c) An individual may receive the following time-limited services without being determined eligible for the service:

(1) emergency services provided in accordance with THSC, §593.027 or §593.0275;

(2) respite care in a residential care facility provided in accordance with THSC, §593.028; and

(3) services in an SSLC ordered in accordance with Texas Family Code, §55.33 or §55.52.

§5.155. Determination of Intellectual Disability (DID).

Effective: November 15, 2015

(a) As permitted by THSC, §593.004, an individual or the individual's LAR may make a written request for a DID to:

(1) the LIDDA serving the area in which the individual resides;

(2) a psychologist licensed to practice in Texas; or

(3) a physician licensed to practice in Texas.

(b) An approved provider at an SSLC may conduct a DID only for an individual receiving services from that SSLC.

(c) At a LIDDA or SSLC, only the following persons may conduct a DID:

(1) a psychologist licensed to practice in Texas who is employed by or contracting with the LIDDA or SSLC and who has completed:

(A) graduate course work in assessing individual intellectual and adaptive behavior for individuals with an intellectual disability or developmental disability; or

(B) one year of supervised experience in assessing individual intellectual and adaptive behavior for individuals with an intellectual disability or developmental disability;

(2) a physician licensed to practice in Texas who is employed by or contracting with the LIDDA or SSLC and who has completed:

(A) one year of employment experience in the field of intellectual disability; and

(B) an internship or residency that includes specialized training in assessing individual intellectual and adaptive behavior or 12 hours of specialized continuing education in assessing individual intellectual and adaptive behavior; or

(3) a certified authorized provider employed by the LIDDA or SSLC.

(d) In conducting a DID, an authorized provider employed by or contracting with a LIDDA or SSLC must:

(1) use the *Determination of Intellectual Disability (DID): Best Practices Guidelines*, available at www.dads.state.tx.us;

(2) interview the individual; and

(3) perform a diagnostic assessment that, at a minimum, includes:

(A) a standardized measure of the individual's intellectual functioning using the most appropriate test based on the characteristics of the individual;

(B) a standardized measure of the individual's adaptive behavior level;

(C) a review of evidence supporting the origination of intellectual disability during the individual's developmental period, which includes, as available:

(i) reports concerning the cause

DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT

of the suspected intellectual disability;
(ii) results of all relevant assessments;

(iii) types of services the individual has received or is receiving;

(iv) reports by other people, including the individual's family members and friends; and

(v) educational records; and

(D) a review of the individual's previous and current psychological and psychiatric treatments and diagnoses, as available.

(e) An authorized provider employed by or contracting with a LIDDA or SSLC must conduct the interview and assessment described in subsection (d) of this section using diagnostic techniques and appropriate accommodations adapted to the individual's age; cultural background; ethnic origins; language; and physical, behavioral, or sensory capabilities.

(f) A previous assessment, social history, or relevant record from another entity, including a school district, public or private agency, or another authorized provider, may be used to meet the requirements in subsection (d)(3)(A) or (B) of this section if the authorized provider employed by or contracting with the LIDDA or SSLC who is conducting the DID considers the assessment, social history, or relevant record to be a valid reflection of the individual's current level of functioning.

(g) An authorized provider employed by or contracting with a LIDDA or SSLC must complete a written report of the DID that is dated, signed, and includes the license number and, if applicable, the certification number of the authorized provider. The written report must contain:

(1) background information summarizing the individual's:

(A) developmental history, including a description of the evidence of origination of intellectual disability during the individual's developmental period; and

(B) previous and current psychological and psychiatric treatments and diagnoses;

(2) results of current intellectual and

adaptive behavior assessments, including:

(A) instrument names;

(B) composite or full scale scores;

(C) cluster, area, and specific or subscale scores, if available; and

(D) overall intellectual functioning and adaptive behavior level;

(3) a narrative description of:

(A) test results, including the individual's relative strengths and weaknesses;

(B) testing conditions, including any accommodations provided or technology used; and

(C) any relevant negative impact on the test results because of the individual's:

(i) cultural background;

(ii) primary language;

(iii) communication style;

(iv) physical or sensory impairments;

(v) motivation;

(vi) attentiveness; and

(vii) emotional factors;

(4) conclusions and diagnoses, including applicable diagnostic codes; and

(5) recommendations, including a statement of:

(A) whether the individual has an intellectual disability; and

(B) if the individual does not have an intellectual disability, whether the individual has:

(i) autism spectrum disorder as described in §5.157 of this title (relating to Autism Spectrum Disorder); or

(ii) a related condition as described on the DADS-approved list of related conditions.

(h) An authorized provider employed by or contracting with a LIDDA or SSLC must provide the written report to the person who requested the DID within 30 days after completing the interview and assessment described in subsection (d) of this section.

(i) If the DID is conducted at a LIDDA or SSLC, the LIDDA or SSLC must:

(1) inform the person who requested the DID, orally and in writing, of the right to:

(A) an additional, independent DID to

**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT**

be conducted at the person's expense if the person questions the validity or results of the DID; and

(B) an administrative hearing to contest the findings of the DID, as described in Chapter 4, Subchapter D of this title (relating to Administrative Hearings under the THSC, Title 7, Subtitle D); and

(2) document that the person who requested the DID was informed orally and in writing of these rights.

(j) If a DID has been ordered by a court for guardianship proceedings, the authorized provider employed by or contracting with a LIDDA or SSLC who conducts the DID:

(1) must submit the written findings and recommendations as specified in the court's order; and

(2) may submit a current capacity assessment of the individual (i.e., DADS Form 2190, available on DADS website at www.dads.state.tx.us).

§5.156. Review and Endorsement of a DID.

Effective: November 15, 2015

(a) Except as provided in subsection (c) of this section, if an individual has been determined to have an intellectual disability, ASD, or a related condition on the DADS-approved list of related conditions, by an authorized provider who is not employed by or contracting with the LIDDA at which the individual or the individual's LAR is seeking services, the LIDDA must ensure that:

(1) the DID report is reviewed by an authorized provider employed by or contracting with the LIDDA; and

(2) the authorized provider conducting the review interviews the individual.

(b) Except as provided in subsection (c) of this section, if an individual has been determined to have an intellectual disability or ASD by an authorized provider who is not employed by or contracting with the SSLC at which the individual is receiving services, the SSLC must ensure that:

(1) the DID report is reviewed by an authorized provider employed by or contracting with the SSLC; and

(2) the authorized provider conducting the

review interviews the individual.

(c) An authorized provider employed by or contracting with a LIDDA or SSLC:

(1) may, but is not required to, review or endorse a diagnostic assessment conducted by another authorized provider employed or contracted by a LIDDA or SSLC; and

(2) must not endorse a DID conducted by that authorized provider.

(d) If a DID report reviewed in accordance with subsection (a) or (b) of this section is endorsed by the authorized provider as a valid reflection of the individual's current level of functioning, the authorized provider must, within 30 days after the review is completed:

(1) document the outcome of the review; and

(2) inform the individual or the individual's LAR orally and in writing of:

(A) the outcome of the review; and

(B) the right to an administrative hearing to contest the findings of the DID, as described in Chapter 4, Subchapter D of this title (relating to Administrative Hearings under Texas Health and Safety Code, Title 7, Subtitle D).

(e) If a DID report reviewed in accordance with subsection (a) or (b) of this section is not endorsed by the authorized provider as a valid reflection of the individual's current level of functioning, the authorized provider must, within 30 days after the review is completed:

(1) document outcome of the review; and

(2) inform the individual or the individual's LAR orally and in writing of:

(A) the outcome of the review; and

(B) the opportunity to have an authorized provider employed by or contracting with the LIDDA or SSLC conduct a diagnostic assessment at no expense to the individual or the individual's LAR.

§5.157. Autism Spectrum Disorder (ASD).

Effective: November 15, 2015

(a) If an individual is determined not to have an intellectual disability, an authorized provider employed by or contracting with a LIDDA may use information from the DID to assist in

**DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT**

establishing the individual's eligibility for LIDDA services based on the existence of autism spectrum disorder (ASD).

(b) The diagnostic assessment report must include information about the date of onset and a description of the individual's deficits, behaviors, and current functioning level that support the criteria for ASD described in the current DSM.

§5.158. Related Condition (RC).

Effective: November 15, 2015

If an individual is determined not to have an intellectual disability, an authorized provider employed by or contracting with a LIDDA may use information from the DID to assist in establishing the individual's eligibility for certain Medicaid services based on the existence of a related condition on the DADS-approved list of related conditions available at www.dads.state.tx.us and §9.238 of this title (relating to ICF/MR Level of Care I Criteria) or §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

§5.161. Certified Authorized Provider.

Effective: November 15, 2015

(a) A LIDDA or SSLC may apply for an employee of the LIDDA or SSLC who is not a licensed psychologist or physician to be designated as a certified authorized provider by submitting:

(1) a request for designation as a certified authorized provider to DADS commissioner or designee as described at www.dads.state.tx.us; and

(2) the following documentation:

(A) for an employee who is not designated as a certified authorized provider or a TDMHMR-certified psychologist as the employee of another LIDDA or SSLC, documentation of the employee's:

(i) current employment with the requesting LIDDA or SSLC;

(ii) current licensure as:

(I) a provisionally licensed psychologist;

(II) a licensed psychological associate (LPA); or

(III) a licensed specialist in

school psychology (LSSP);

(iii) successful completion of graduate course work in individual intellectual assessment;

(iv) supervised experience or successful completion of graduate course work in adaptive behavior assessment; and

(v) one year of employment, internship, or practicum in the field of intellectual disability; or

(B) for an employee who is designated as a certified authorized provider or a TDMHMR-certified psychologist as the employee of another LIDDA or SSLC:

(i) documentation of the employee's current employment with the requesting LIDDA or SSLC; and

(ii) a copy of the certificate designating the employee as a certified authorized provider or a TDMHMR-certified psychologist issued before November 15, 2015.

(b) The DADS commissioner or designee reviews the documentation submitted in accordance with subsection (a) of this section.

(1) If the employee is approved, DADS commissioner or designee issues a certificate designating the employee as a certified authorized provider of the requesting LIDDA or SSLC.

(2) If the employee is not approved, DADS commissioner or designee notifies the requesting LIDDA or SSLC of the determination and the reasons why.

(c) A certified authorized provider is permitted to conduct a diagnostic assessment in accordance with this subchapter only while functioning as an employee of the requesting LIDDA or SSLC.

(d) A person's designation as a certified authorized provider remains valid only if:

(1) the person remains employed by the requesting LIDDA or SSLC; and

(2) the person maintains active licensure status as described in subsection (a)(2)(A)(ii) of this section, unless the person has documentation to evidence the person was designated as a TDMHMR-certified psychologist before March 31, 2002.

(e) A LIDDA or SSLC that employs a

DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)
40 TAC, CHAPTER 5, SUBCHAPTER D
DIAGNOSTIC ASSESSMENT

certified authorized provider must ensure the designation of the certified authorized provider is valid in accordance with subsection (d) of this section.

(f) DADS may, at any time, revoke a person's designation as a certified authorized provider.