The existing rules for Diagnostic Assessment in Texas Administrative Code Title 40, [Chapter 5, Subchapter D](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=40&pt=1&ch=5&sch=D&rl=Y) are being repealed entirely. The new rules for Diagnostic Assessment will be located in Texas Administrative Code Title 26, Chapter 304. This draft includes the new rules for Chapter 304.

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CHAPTER 304 DIAGNOSTIC ASSESSMENT

SUBCHAPTER A GENERAL PROVISIONS

§304.101. Purpose.

(a) The purpose of this chapter is to describe the criteria used and the process 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 (ID), autism spectrum disorder (ASD), and a related condition; and

(2) by a LIDDA or SSLC, to review a determination of ID or a diagnosis of ASD, or related condition for endorsement.

(b) This chapter identifies the qualifications and requirements of an authorized provider employed by or contracting with a LIDDA or an SSLC.

§304.102. Definitions.

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

(1) ABL--Adaptive behavior level. The categorization of an individual's functioning level of adaptive behavior into one of five levels ranging from minimal limitations (0) through profound limitations (IV).

(2) 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.

(3) ASD--Autism spectrum disorder. As described in the most current Diagnostic and Statistical Manual of Mental Disorders (DSM), 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) Asperger disorder--A neurodevelopmental disorder characterized by severe, sustained, clinically significant impairment of social interaction or communication skills and restricted, repetitive, and stereotyped patterns of behavior or interests. Symptoms may present later during the developmental period. Since the expanded definition of ASD in the DSM, effective 2013, Asperger disorder may be considered a form of ASD.

(5) 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.

(6) Certified authorized provider--A person who is certified by HHSC as described in §304.302 of this chapter (relating to Certified Authorized Provider).

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

(8) Diagnostic assessment--An assessment, including a determination of intellectual disability (DID), conducted to determine if an individual meets the criteria for a diagnosis of ID, ASD, or a related condition.

(9) Diagnostic assessment report--The written report from a diagnostic assessment not conducted by an authorized provider employed by or contracting with a LIDDA or SSLC.

(10) DID--Determination of intellectual disability. An assessment conducted in accordance with §304.401 of this chapter (relating to Conducting a Determination of Intellectual Disability) by an authorized provider to determine if an individual meets the criteria for a diagnosis of intellectual disability.

(11) DID report--The findings of the diagnostic assessment conducted by an authorized provider employed by or contracting with a LIDDA or SSLC written in accordance with §304.402 of this chapter (relating to The Determination of Intellectual Disability Report).

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

(13) HHSC--Texas Health and Human Services Commission.

(14) ID--Intellectual disability. Consistent with Texas Health and Safety Code (THSC), §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

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

(16) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, 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.

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

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

(A) a person with an ID;

(B) a person with ASD;

(C) a person with a related condition on the HHSC-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 ID 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 HHSC; or

(F) a person diagnosed by an authorized provider as having a pervasive developmental disorder (PDD) or Asperger disorder through a diagnostic assessment completed before 2013.

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

(20) PDD--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. Since the expanded definition of ASD in the DSM, effective 2013, PDD may be considered a form of ASD.

(21) 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 ID because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with an ID, and requires treatment or services similar to those required for persons with an ID;

(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.

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

(23) SSLC--State supported living center. A facility operated by HHSC, including the ICF/IID component of the Rio Grande State Center, that provides services, including residential services, to individuals with a profound or severe ID or an ID with intensive medical or behavioral needs.

(24) 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.

(25) TAC--Texas Administrative Code.

(26) THSC--Texas Health and Safety Code.

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SUBCHAPTER B PURPOSE OF THE DETERMINATION OF INTELLECTUAL DISABILITY

§304.201. Use of Information from a Diagnostic Assessment.

(a) A LIDDA uses information from a DID or a report endorsed as a DID that was conducted in accordance with Subchapter D of this chapter (relating to Determination of Intellectual Disability) to determine an individual's eligibility for LIDDA services.

(b) HHSC uses information from a DID or a report endorsed as a DID that was conducted in accordance with Subchapter D of this chapter to determine an individual's eligibility for certain services and supports provided through HHSC.

(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.

§304.202. Request for a Determination of Intellectual Disability.

(a) 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 authorized provider must conduct the DID.

§304.203. Right to an Independent Determination of Intellectual Disability or Administrative Hearing.

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 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 40 TAC Chapter 4, Subchapter D (relating to Administrative Hearings under Texas Health and Safety Code, Title 7, Subtitle D); and

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

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SUBCHAPTER C AUTHORIZED PROVIDERS

§304.301. Qualifications and Requirements for an Authorized Provider.

(a) An authorized provider employed by or contracting with an SSLC may conduct a DID only for an individual receiving services from that SSLC.

(b) At a LIDDA or an SSLC, a person conducting a DID must be:

(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 intellectual and adaptive behavior for individuals with an ID or developmental disability; or

(B) one year of supervised experience in assessing intellectual and adaptive behavior for individuals with an ID 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 ID; 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, as described in §304.302 of this subchapter (relating to Certified Authorized Provider).

§304.302. Certified Authorized Provider.

(a) To designate an employee or contractor of the LIDDA or SSLC who is not a licensed psychologist or physician as a certified authorized provider:

(1) a LIDDA may submit a request to HHSC, in accordance with the LIDDA Handbook; or

(2) an SSLC may submit a request to HHSC, in accordance with HHSC procedures.

(b) A level I certified authorized provider must:

(1) be a current employee of the LIDDA or SSLC;

(2) be:

(A) a provisionally licensed psychologist;

(B) a licensed psychological associate (LPA), other than an LPA authorized to practice independently; or

(C) a licensed specialist in school psychology;

(3) have supervised experience or successful completion of graduate course work in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability; and

(4) have one year of employment, internship, or practicum in the field of ID.

(c) A level II certified authorized provider:

(1) may be employed by or contracting with the LIDDA or SSLC;

(2) must be a psychological associate licensed to practice in Texas who is authorized to practice independently in accordance with 22 TAC §463.8 (relating to Licensed Psychological Associate);

(3) must have supervised experience or successful completion of graduate course work in assessing intellectual and adaptive behavior for individuals with an ID or developmental disability; and

(4) must have one year of employment, internship, or practicum in the field of ID.

(d) A certified authorized provider is permitted to conduct a DID in accordance with this chapter only while functioning as an employee or contractor of the requesting LIDDA or SSLC.

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

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SUBCHAPTER D DETERMINATION OF INTELLECTUAL DISABILITY

§304.401. Conducting a Determination of Intellectual Disability.

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

(1) adhere to the Determination of Intellectual Disability (DID): Best Practice Guidelines and Requirements, available on the HHSC website;

(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 ABL;

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

(i) reports concerning the cause of the suspected ID;

(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.

(b) An authorized provider employed by or contracting with a LIDDA or SSLC must conduct the interview and assessment described in subsection (a) 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.

(c) 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 (a)(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.

§304.402. The Determination of Intellectual Disability Report.

(a) 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 ID during the individual's developmental period; and

(B) previous and current psychological and psychiatric evaluations, 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 ABL;

(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 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;

(vii) emotional and behavioral factors; and

(viii) home and family variables;

(4) an integrative summary that includes diagnostic impressions, conclusions, and diagnoses, including applicable diagnostic codes; and

(5) recommendations, including a statement of:

(A) whether the individual has an ID; and

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

(i) ASD as described in §304.503 of this chapter (relating to Autism Spectrum Disorder); or

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

(b) An authorized provider must provide the written report to the person who requested the DID within 30 days after completing the interview and assessment described in §304.401(a) of this subchapter (relating to Conducting a Determination of Intellectual Disability).

(c) If a DID has been ordered by a court for guardianship proceedings, the authorized provider 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 using an HHSC-approved form.

§304.403. Review and Endorsement of a Determination of Intellectual Disability Report.

(a) An individual or the individual’s LAR may make a written request to the LIDDA serving the area in which the individual resides for an endorsement of a DID or an endorsement of a private or school assessment report as a DID that reflects current functioning.

(b) Except as provided in subsection (d) of this section, if an individual has been determined to have an ID, ASD, or a related condition on the HHSC-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 diagnostic assessment report is reviewed by an authorized provider employed by or contracting with the LIDDA; and

(2) the authorized provider conducting the review interviews and observes the individual using interactive and synchronous communication.

(c) Except as provided in subsection (d) of this section, if an individual has been determined to have an ID, ASD, or an approved related condition 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 diagnostic assessment report is reviewed by an authorized provider employed by or contracting with the SSLC; and

(2) the authorized provider conducting the review interviews and observes the individual using interactive and synchronous communication.

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

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

(2) must not endorse a DID conducted by that authorized provider without seeking additional clinical consultation from another authorized provider in order to verify accuracy of the DID findings.

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

(1) the authorized provider must:

(A) document the outcome of the review; and

(B) inform the individual or the individual's LAR orally and in writing of the outcome of the review; and

(2) the LIDDA or SSLC must inform the individual or the individual's LAR orally and in writing of the right to an administrative hearing to contest the findings of the DID, as described in 40 TAC Chapter 4, Subchapter D (relating to Administrative Hearings under Texas Health and Safety Code, Title 7, Subtitle D).

(f) If a DID report reviewed in accordance with subsections (b) or (c) 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 the outcome of the review;

(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; and

(3) the LIDDA or SSLC must inform the individual or the individual's LAR orally and in writing of the right to an administrative hearing to contest the findings of the DID, as described in 40 TAC Chapter 4, Subchapter D.

§304.404. Elements of a Transfer.

(a) When an individual relocates from one local service area or SSLC to another local service area or SSLC, the sending LIDDA or SSLC must ensure the following documentation is provided to the receiving LIDDA or SSLC:

(1) previous and current psychological and psychiatric evaluations;

(2) documents regarding treatments and diagnoses;

(3) all assessments, including previous DIDs and school assessments, if applicable; and

(4) any other information requested by the receiving LIDDA or SSLC.

(b) When an individual relocates from one local service area or SSLC to another local service area or SSLC, the receiving LIDDA or SSLC may review and endorse the DID report, in accordance with §304.403 of this subchapter (relating to Review and Endorsement of a Determination of Intellectual Disability Report).

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SUBCHAPTER E INTELLECTUAL DISABILITY AND RELATED CONDITIONS

§304.502. Related Condition.

(a) If an individual is determined not to have an ID, 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 current HHSC-approved list of related conditions available on the HHSC website and §261.238 of this title (relating to ICF/MR Level of Care I Criteria) or §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

(b) The DID report must include information about the date of onset and a description of the individual's deficits, skills, behaviors, and current functioning level.

§304.503. Autism Spectrum Disorder.

(a) If an individual is determined not to have an ID, 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 LIDDA services based on the existence of ASD.

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