



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Developmental Disabilities Administration

- Preproposal Statement of Inquiry was filed as WSR:17-03-066; or
- Expedited Rule Making--Proposed notice was filed as WSR:___; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

Title of rule and other identifying information:

The department is proposing to amend chapter 388-827 WAC "State Supplementary Payment Program".

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>

Date: **May 9, 2017** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185

by: 5:00 p.m. May 9, 2017

Assistance for persons with disabilities: Contact:
Jeff Kildahl, DSHS Rules Consultant by April 25, 2017
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Date of intended adoption: Not earlier than May 10, 2017
(Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The department is proposing to amend chapter 388-827 WAC to improve clarity and update policy. In accordance with ESSB 6052, Section 205, 64th Legislature (2015) and SSA-authorized State Plan Amendments, these amendments offer State Supplementary Payment Program (SSP) to clients who received prevocational services as of September 1, 2015. A State Plan Amendment was authorized by the Social Security Administration which added Pre-Vocational Legacy as an SSP payment. In order to keep in compliance with the State Plan, these rules are being updated. In addition, the federal government requires that the department meet the SSP maintenance of effort (MOE).

Prevocational services do not meet the Centers for Medicare and Medicaid Services (CMS) federal requirements as an integrated setting. SSP Pre-Vocational Legacy will allow Developmental Disabilities Administration (DDA) clients to transition from prevocational services, which do not meet CMS requirements to access services, in an integrated setting. SSP Pre-Vocational Legacy may be used to purchase needed services, such as respite, and other community services.

Reasons supporting proposal:

These rule changes are necessary to meet MOE and to prevent risk of losing federal funding by jeopardizing the Medicaid Program, help the welfare of individuals transitioning from Prevocational services to more integrated community settings, allow clients to more easily remain in the community setting, and make it less likely for a client to enter into an institutional setting.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.030, ESSB 6052, Section 205, 64th Legislature (2015)

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 30, 2017

TIME: 10:58 AM

WSR 17-08-043

DATE

March 29, 2017

NAME (type or print)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	(360) 407-1581
Implementation:	Lonnie Keesee	P.O. Box 45310, Olympia, WA 98504-5310	(360) 407-1529
Enforcement:	Lonnie Keesee	P.O. Box 45310, Olympia, WA 98504-5310	(360) 407-1529

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone: ()

Fax: ()

e-mail

No. Explain why no statement was prepared.

Under chapter 19.85.025 RCW the department is exempt from preparing a SBEIS because these amendments do not impose more than minor costs on small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Chantelle Diaz

Address: P.O. Box 45310, Olympia, WA 98504-5310

Phone: (360) 407-1581

fax: (360) 407-0955

e-mail: DiazCM1@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

WAC 388-827-0100 ~~What is ((the)) a state supplementary payment ((-SSP) that is administered by the division of developmental disabilities (DDD))?~~ (1) The state supplementary payment ((-SSP)) is a state-paid cash assistance program for ((certain)) eligible clients of the ((division of)) developmental disabilities administration.
(2) There are five types of state supplementary payment:
(a) Children's legacy care;
(b) Home and community based services waiver;
(c) Prevocational legacy;
(d) Residential habilitation; and
(e) State supplementary payment in lieu of individual and family services.

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

WAC 388-827-0105 ~~((What are the eligibility requirements for the DDD/SSP program)) Who is eligible for a state supplementary payment?~~ ((To be eligible to receive DDD/SSP, you must be determined DDD eligible under RCW 71A.10.020 and meet all of the financial and programmatic criteria for DDD/SSP)) (1) The developmental disabilities administration (DDA) must not enroll you in state supplementary payments after the effective date of this section, unless you are eligible for a state supplementary payment for prevocational legacy.
(2) To be eligible for a state supplementary payment, you must meet all general eligibility requirements under subsection (3) of this section and any applicable program-specific requirements under subsections (4) through (8) of this section.
(3) To be eligible for a state supplementary payment, you must:
(a) Be determined DDA eligible under chapter 388-823 WAC;
(b) Complete an in-person interview and reassessment with DDA once every twelve months—or more often if DDA deems it necessary—to determine whether you continue to meet eligibility requirements; and
(c) Be financially eligible because:
(i) You receive supplementary security income cash assistance for the month in which the state supplementary payment is issued; or
(ii) You receive social security Title II benefits as a disabled adult child, your SSI was terminated due to the receipt of these benefits, and you would be eligible for SSI if you did not receive these benefits.
(4) To be eligible for children's legacy care state supplementary payments, you must live with your family as defined in WAC 388-832-0001.
(5) To be eligible for a state supplementary payment for waiver services, you must be enrolled in a home and community based services waiver program as described in chapter 388-845 WAC.
(6) To be eligible for prevocational legacy state supplementary payments, you must:

- (a) Have left prevocational services on or after September 1, 2015; and
- (b) Not be enrolled in a DDA residential habilitative service.
- (7) To be eligible for residential habilitation state supplementary payments, you must be receiving a residential habilitation service as described in chapter 388-845 WAC and as identified in your person-centered service plan.
- (8) To be eligible for state supplementary payments in lieu of individual and family services you must be:
 - (a) At least three years old; and
 - (b) Living with your family as defined in WAC 388-832-0001.

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

WAC 388-827-0120 ~~((How often will my eligibility for DDD/SSP be redetermined))~~ **May DDA deny, reduce, or terminate a state supplementary payment?** ~~((Redetermination of eligibility for the DDD/SSP program will be conducted at least every twelve months, or more frequently if deemed necessary by DDD))~~ (1) The developmental disabilities administration (DDA) may deny, reduce, or terminate a state supplementary payment if one or more of the following is true:

- (a) You do not meet the eligibility requirements under WAC 388-827-0105;
- (b) You do not cooperate with DDA during:
 - (i) Service planning; or
 - (ii) Required quality assurance and program monitoring activities;
- (c) You choose to unenroll from state supplementary payments.

(2) Except for state supplementary payments for prevocational legacy and state supplementary payments for waiver services, DDA will terminate your state supplementary payment if you enroll in a home and community based services waiver.

(3) State supplementary payments are limited to available funding.

(4) DDA will terminate your state supplementary payments for prevocational legacy if you enter into a DDA prevocational service or a DDA residential habilitation service.

AMENDATORY SECTION (Amending WSR 07-24-030, filed 11/28/07, effective 12/29/07)

WAC 388-827-0125 ~~((How will I know if I am eligible to receive a DDD/SSP payment))~~ **If DDA denies, reduces, or terminates a state supplementary payment, what may I do?** ~~((You will receive a written notification from DDD if you have been identified as eligible for a DDD/SSP payment))~~ (1) If the developmental disabilities administration (DDA) denies, reduces, or terminates a state supplementary payment, you may request an administrative hearing, an exception to rule under WAC 388-440-0001, or both.

(2) To request an administrative hearing, see WAC 388-825-120 through 388-825-165.

(3) To request an exception to rule, you must submit a written request for an exception to rule to the DDA regional administrator.

(4) DDA may grant an exception to any requirement in this chapter if the assistant secretary decides that the facts of your case justify an exception to rule.

(5) DDA must notify you in writing of the assistant secretary's decision no later than sixty days after the regional administrator received your request for an exception to rule.

(6) You do not have the right to challenge at an administrative hearing the assistant secretary's decision regarding your request for an exception to rule. You may have a hearing right under WAC 388-825-120.

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

WAC 388-827-0145 How much money will ((I receive)) DDA authorize? ((The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.))

(1) ((For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) If you receive SSP in lieu of individual and family services you will receive the following amounts based on your DDA assessment)) If you are authorized to receive a state supplementary payment for residential habilitation:

(a) DDA will base your payment on your residential need as identified in your current person-centered service plan.

(b) DDA will reassess your need and may adjust your payment amount if the type of your residential living arrangement changes.

(2) If you are authorized to receive a home and community based services (HCBS) waiver state supplementary payment, DDA authorizes seventy-five dollars per month.

(3) If you are authorized to receive children's legacy state supplementary payment, DDA authorizes one hundred dollars per month.

(4) If you are authorized to receive a prevocational legacy state supplementary payment, DDA authorizes three hundred dollars per month.

(5) If you are authorized to receive a state supplementary payment in lieu of individual and family services (IFS), your IFS score determines your monthly payment amount:

<u>((If your individual and family services score is:)) IFS score</u>	<u>((The award level will be)) Award level</u>	<u>((The amount of your award will be)) Monthly payment</u>
<u>0-60</u>	<u>((Not eligible)) No award</u>	<u>((Not eligible)) \$0</u>

((If your individual and family services score is:)) IFS score	((The award level will be)) Award level	((The amount of your award will be)) Monthly payment
61-240	((Level 1)) Level 1	(((\$1,200)) \$100
241-336	((Level 2)) Level 2	(((\$1,800)) \$150
337-527	((Level 3)) Level 3	(((\$2,400)) \$200
528 or more	((Level 4)) Level 4	(((\$3,600)) \$300

~~((a) If you are on the home and community based services (HCBS) waiver administered by DDD:~~

~~(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.~~

~~(ii) The remainder up to the maximum yearly award for traditional family support or family support opportunities may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.~~

~~(b) If you are not on the HCBS waiver administered by DDD, and you received state only funding for the traditional family support program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.~~

~~(i) Need is based on your service need level and whether you receive medicaid personal care as specified in WAC 388-825-254.~~

~~(ii) If your need changes, the amount of your SSP will be adjusted accordingly.~~

~~(c) If you are not on the HCBS waiver administered by DDD, and you received state only funding for the family support opportunity program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.~~

~~(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.~~

~~(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.~~

~~(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment)) (6) Opting out of home and community based services waiver will not increase your state supplementary payment.~~

~~(7) DDA may authorize additional payments to individuals authorized to receive a state supplementary payment if DDA's state supplementary payment budget allows.~~

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

WAC 388-827-0155 ~~((Who will the warrant/check be sent to))~~ **How will DDA send my state supplementary payment?** (1) ~~((If you are a child under the age of eighteen, the warrant/check will be sent to~~

~~your legal representative or protective payee or representative payee))~~ You may choose to have DDA send your state supplementary payment through:

(a) Electronic funds transfer; or

(b) The U.S. Postal Service.

~~(2) If you are ((a person)) under age eighteen ((and older)), ((the warrant/check will be sent directly))~~ the developmental disabilities administration (DDA) sends your supplementary payment to your ((protective payee or)) representative payee ((if you have one)).

~~(3) If you are age eighteen or older, DDA sends your state supplementary payment to your representative payee if you have one. If you do not have a ((protective payee or)) representative payee, ((the warrant/check will be sent))~~ DDA will send your state supplementary payment directly to you.

NEW SECTION

WAC 388-827-0157 What is a representative payee? (1) A representative payee is a person or entity that receives and manages your state supplementary payments on your behalf.

(2) If the Social Security Administration assigned a representative payee to you, the developmental disabilities administration (DDA) will send your state supplementary payments to that representative payee.

(3) If you do not have a representative payee and your wish to establish one:

(a) You must nominate a person or entity to be your representative payee; and

(b) DDA must confirm your nominee.

(4) When deciding whether to confirm your nominee, DDA may consider:

(a) The nominee's:

(i) Relationship to you;

(ii) Interest in your well-being;

(iii) Understanding of your needs;

(iv) Existing legal authority, if any, to act on your behalf; and

(b) Any other information known to DDA.

(5) If DDA declines to confirm the person or entity you nominated, DDA must send you written notice within thirty days of its decision.

(6) A representative payee must:

(a) Spend your state supplementary payment on your behalf;

(b) Notify DDA of any changes in your circumstances that could affect your eligibility to receive a state supplementary payment;

(c) Notify DDA of any change in the representative payee's ability to comply with this chapter;

(d) Submit to DDA upon request a written account of how each state supplementary payment received on your behalf was spent; and

(e) Accept liability for any overpayment under WAC 388-827-0400(3).

WAC 388-827-0400 What is ((an-SSP)) a state supplementary payment overpayment? (1) An overpayment ((means any SSP paid that is more than the amount you were eligible to receive)) occurs if you or your representative payee receive state supplementary payment funds and at the time the developmental disabilities administration (DDA) paid the funds:

(a) You were not eligible to receive the funds under WAC 388-827-0105; or

(b) The sum DDA paid exceeds the sum you were eligible to receive under WAC 388-827-0145.

(2) ((If you request a hearing and the hearing decision determines that you received any DDD/SSP money that you were not eligible to receive, then some or all of the DDD/SSP you received before the hearing decision must be paid back to the department)) You are liable to DDA for the amount of the overpayment if:

(a) You received the overpayment directly; or

(b) Your representative payee received the overpayment in good faith and spent the money on your behalf.

(3) Your representative payee is liable to DDA for the amount of the overpayment if the representative payee:

(a) Has not spent the state supplementary payment funds on your behalf; or

(b) Received the state supplementary payment in bad faith.

(4) A representative payee received a state supplementary payment in bad faith if the representative payee knew you were not entitled to some or all of that payment.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|---|
| WAC 388-827-0110 | What are the financial eligibility requirements to receive DDD/SSP? |
| WAC 388-827-0115 | What are the programmatic eligibility requirements for DDD/SSP? |
| WAC 388-827-0121 | Will I need an assessment to remain eligible for SSP? |
| WAC 388-827-0130 | Can I choose not to accept DDD/SSP payments? |
| WAC 388-827-0131 | What happens if I no longer meet the financial or programmatic requirements after my funding has been converted to the DDD/SSP program? |
| WAC 388-827-0133 | What is the impact on medicaid eligibility on the receipt of state supplemental payments (SSP)? |

WAC 388-827-0135 Can I apply for the DDD/SSP program if I am not identified by DDD as eligible for the DDD/SSP program?

WAC 388-827-0140 What are my appeal rights if DDD determines that I am not eligible for DDD/SSP?

WAC 388-827-0146 May I voluntarily remove myself from the home and community based services (HCBS) waiver administered by DDD in order to increase the amount of my SSP?

WAC 388-827-0150 How often will I receive my DDD/SSP warrant/check?

WAC 388-827-0160 How will the warrant/check be sent?

WAC 388-827-0170 Are there rules restricting how I use my DDD/SSP money?

WAC 388-827-0175 What changes must I report to the department?

WAC 388-827-0180 Do I have additional responsibilities when I purchase my own services?

WAC 388-827-0185 When will the department stop sending my DDD/SSP money?

WAC 388-827-0200 What is a representative payee?

WAC 388-827-0210 Who can be a representative payee for my DDD/SSP?

WAC 388-827-0215 What are the responsibilities of a representative payee?

WAC 388-827-0300 Does DSHS make exceptions to the requirements in this chapter?

WAC 388-827-0410 When can an overpayment occur?

WAC 388-827-0420 Who is liable for repayment of an overpayment?