RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

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

Emergency Rule Only

Effective date of rule:
Emergency Rules
☐ Immediately upon filing.
☒ Later (specify) December 28, 2016

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose: The department is updating WAC 388-827-0115 "What are the programmatic eligibility requirements for DDD/SSP?", WAC 388-827-0145 "How much money will I receive?", and WAC 388-827-0185 "When will the department stop sending my DDD/SSP money?" to offer State Supplemental Payment (SSP) to those clients who were receiving prevocational services as of September 1, 2015.

Citation of existing rules affected by this order:
Repealed: None
Amended: WAC 388-827-0115, WAC 388-827-0145, WAC 388-827-0185
Suspended: None

Statutory authority for adoption: RCW 71A.12.030, RCW 71A.12.120

Other authority: ESSB 6052 64th Legislature, State Plan Amendment as authorized by the Social Security Administration

EMERGENCY RULE
Under RCW 34.05.350 the agency for good cause finds:
☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
☐ That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: 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). These rule changes are necessary to meet MOE and to prevent risk of losing federal funding by jeopardizing the Medicaid Program.

Prevocational services do not meet the CMS federal requirements as an integrated setting. SSP Pre-Vocational Legacy will allow 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. Amendments help the welfare of individuals transitioning from Prevocational services to more integrated community services, and allow clients to more easily remain in the community setting, and less likely to enter into an institutional setting.
The department established a workgroup to draft language for permanent adoption but have discovered while working on the draft, that more extensive edits are required and will file a new preproposal and withdraw the previous CR 101.

Date adopted:
December 20, 2016

NAME (TYPE OR PRINT)
Katherine Vasquez

SIGNATURE
Katherine A. Vasquez

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 21, 2016
TIME: 11:06 AM

WSR 17-01-168

(COMPLETE REVERSE SIDE)

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	3	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New _____ Amended _____ Repealed _____

The number of sections adopted in the agency's own initiative:

New _____ Amended _____ Repealed _____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	3	Repealed	_____

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

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

(i) Foster care basic maintenance,

(ii) Foster care specialized support,

(iii) Agency specialized support,

(iv) Staffed residential home,

(v) Out-of-home respite care,

(vi) Agency in-home specialized support,

(vii) Group care basic maintenance,

(viii) Group care specialized support,

(ix) Transportation,

(x) Agency attendant care,

(xi) Child care,

(xii) Professional services,

(xiii) Nursing services,

(xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

(i) Adult family home,

(ii) Adult residential care facility,

(iii) Alternative living,

(iv) Group home,

(v) Supported living,

(vi) Agency attendant care,

(vii) Supported living or other residential service allowance,

(viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) You meet the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS) and you are currently receiving SSI payments or you would receive SSI payments if you did not receive Social Security Title II benefits as a disabled adult child.

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

(11) As of September 1, 2016, you meet the following eligibility requirements:

(a) You exited DDD prevocational services on or after September 1, 2015;

(b) You do not receive prevocational services as defined in WAC 388-845-1400 through 388-845-1410; and

(c) You do not receive DDD residential habilitation services as defined in WAC 388-845-1500 through 388-845-1515.

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? 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 your individual and family services score is:	The award level will be	The amount of your award will be
0-60	Not eligible	Not eligible
61-240	Level 1	$1,200
241-336	Level 2	$1,800
337-527	Level 3	$2,400
528 or more	Level 4	$3,600

(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.

(5) If you receive DDD prevocational legacy SSP payments, you will receive three hundred dollars per month.

AMENDATORY SECTION (Amending WSR 04-15-094, filed 7/16/04, effective 8/16/04)

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

(1) You no longer are eligible for or receive SSI cash benefits and are ineligible for SSI for reasons other than the receipt of Social Security Title II benefits as a disabled adult child;

(2) You no longer demonstrate a need for the services as described in WAC 388-827-0115; ((~~or~~))

(3) Your DDD eligibility is terminated; or

(4) You receive DDD SSP prevocational legacy, and you begin receiving prevocational services or a DDD residential habilitation service.