STATE OF RHODE ISLAND
DEPARTMENT OF HUMAN SERVICES

TO: **Interested Parties**

FROM: **DHS Office of Policy Development**

DATE: **January 22, 2015**

SUBJECT: **Proposed DHS Rule-Making**

In accordance with the Administrative Procedures Act, the Department of Human Services is advertising for promulgation the following proposed and amended DHS rules. These rules are being amended in compliance with state and federal law and good practice. The proposed rules are as follows:

Supplemental Security Income (SSI) and State Supplemental Payment (SSP) Program Rules and Regulations

This rule is being amended to reflect the following:

> The Supplemental Security Income (SSI) and State Supplemental Payment (SSP) Program rules are amended to reflect the federal Social Security Administration Cost-of-Living increase. These changes were implemented under emergency rule making, effective January 1, 2015, to ensure the rules were in compliance with State and Federal guidance. This proposed rule is being filed under regular rule making provisions to sustain the revisions made to the DHS SSI and SSP Program Rules and Regulations.

In the development of these rules, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

This proposed rule is accessible on the R.I. Secretary of State website (http://www.sec.state.ri.us/ProposedRules/) and the DHS website (www.dhs.ri.gov) or available in hard copy upon request ((401) 462-2018 or RI Relay, dial 711). Interested persons should submit data, views or written comments between Thursday, January 22, 2015 and Saturday, February 21, 2015 to Bethany Caputo, Office of Policy Development, Department of Human Services, Louis Pasteur Building, Bldg. 57, Howard Avenue, Cranston, RI 02920.

In accordance with RIGL 42-35-3, a public hearing will be granted if requested by twenty-five (25) persons or by an agency or association having at least twenty-five (25) members. A request for a public hearing must be made within thirty (30) days of this notice (between Thursday, January 22, 2015 and Saturday, February 21, 2015.

The Department of Human Services does not discriminate against individuals based on race, color, national origin, sex, gender identity or expression, sexual orientation, religious belief, political belief or handicap in acceptance for or provision of services or employment in its programs or activities.

Rhode Island

Department of Human Services

SUPPLEMENTAL SECURITY INCOME (SSI)

AND

STATE SUPPLEMENTAL PAYMENT (SSP)

PROGRAM

~~December 2014~~March 2015

Rhode Island Department of Human Services Supplemental Security Income and State Supplemental Payment Program
Rules and Regulations

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Rhode Island Department of Human Services
Supplemental Security Income and State Supplemental Payment
Rules and Regulations

SECTION ONE GENERAL PROVISIONS

Statement of Intent

Effective January 1, 2011, the Department of Human Services (DHS) will administer the state supplemental portion of monthly Supplemental Security Income (SSI) benefits to eligible residents of Rhode Island. The Social Security Administration (SSA) will continue to send the Federal portion of SSI benefits. The DHS will issue a separate payment for the State Supplemental Payment (SSP).

DHS will be responsible for income eligibility determinations for those who are denied Federal SSI due to excess income (Subparts K and D of 20 CFR 416 Income, Subpart L Resources). DHS will also be responsible for disability determinations on those denied Federal SSI due to excess income but eligible for a State Supplemental Payment (SSP). If the individual does not meet the resource limits set in 20 CFR 416.1205, he/she is not eligible for an SSI payment, Federal or State.

Payment levels are established by specific categories which indicate living arrangement.

DHS will administer the State supplemental portion for the following living arrangements:

- Category A - Individual or Couple in Own Household
- Category B - Individual or Couple in Another's Household
- Category E - Individual or couple in Title XIX Facility

SSA will continue to administer the State supplemental portion for SSI recipients in the following living arrangement:

- Category D – Individual in Residential Care/Assisted Living

Legal Basis

SUPPLEMENTAL SECURITY INCOME PROGRAM

The Supplemental Security Income (SSI) Program, Title XVI of the Social Security Act, established by P.L. 92-603, as amended, provides, on a national basis, a minimum income level for persons sixty-five (65) or over, or blind, or disabled persons who do not have sufficient income and resources to maintain themselves at the Federal minimum income level.

The SSI Program, administered by the Federal government through the Social Security Administration and financed from the General Fund of U.S. Treasury, became effective 1-1-74 and replaced Titles I, X, XIV, XVI of the Social Security Act which had provided assistance to aged, blind, and disabled persons under state administration.

STATE SUPPLEMENTAL PAYMENT

Federal law requires the states to provide a mandatory supplement to those persons who, in December 1973 under the old programs, were receiving a payment greater than the new Federal minimum level. Rhode Island, however, established a level of payment greater than the Federal minimum payment and made it available to all eligible persons. In October 1990, Rhode Island also established a standard for eligible residents living in a licensed residential care facility.

Rhode Island also provides to SSI recipients medical care, including group care through the Medical Assistance Program (Title XIX Program), and social services through a Social Services Block Grant. Assistance is available for moving expenses, needs resulting from an emergency of a catastrophic nature, residence in a licensed sheltered care facility, and for burial when the criteria for these services have been met. Homemaking Services are available to qualified individuals under the Social Services Program (see Section 0530).

Essential spouses of eligible SSI recipients who were included in the Aid to the Aged, Blind and Disabled (AABD) payment in December, 1973 are grandfathered into the SSI program. Essential spouses will be included in the SSI payment of the eligible SSI person as long as his/her eligibility continues.

SECTION TWO ADMINISTRATION AND ORGANIZATION

A. Where to Apply

1. SSI Office - Information relative to eligibility requirements for the SSI Program can be obtained by contacting the appropriate Social Security Administration office. To find the nearest office call the Social Security Office at 1-800-772-1213 or online at www.socialsecurity.gov. Individuals eligible for an SSI benefit are automatically eligible for an SSP.
2. DHS Office - Information relative to eligibility requirements for the SSP Program can be obtained by contacting staff in the State Supplement Unit. Refer to www.dhs.ri.gov for a list of DHS offices.
3. Individuals/couples who wish to apply for a State-Only Supplemental Payment must first apply at the SSA office to determine SSI eligibility.

B. Standards of Assistance – The Rhode Island Federal Supplemental Security Income and State Supplemental Payment Rates Table, Attachment 1, details the payment rates for Federal SSI and the State Supplemental Payment for an individual/couple in each of the approved Federal living arrangements for SSI/SSP.

1. The SSA will continue to administer the SSP for Category D – Individual in Residential Care/Assisted Living.
   a. In this category an individual must be screened, assessed, and certified by DHS, or their agents, to be residing in a residential care/assisted living facility.
   b. All individuals who received this category payment level in October 1998 or November 1998 are exempt from the screening, assessment, and certification process.

2. State-Only Supplemental Calculation – State-Only supplemental payments are calculated based on the countable income of the individual or couple.
   a. An individual/couple who has countable income over the Federal cap but below the total cap may be eligible for the State-Only Supplemental Payment.
   b. Countable income and resources are calculated consistent with provisions established in Medical Assistance Rules:
      Section 0362 Income Generally;
      Section 0364 Treatment of Income;
      Section 0358 SSI-Related Deeming of Resources;
      Section 0366 SSI-Related Deeming of Income;
      Section 0380 Resources Generally; and
      Section 0382 Evaluation of Resources.

C. SSI/SSP Payment Distribution

1. SSI recipients will continue to receive Federal SSI payments from the SSA in the manner determined by the SSA.
2. SSI/SSP recipients will receive two (2) separate payments; one from the Federal SSI and one from the State for the SSP. Recipients will receive payments in the manner they receive their SSI benefit.
3. State-Only Supplemental payments for new recipients starting January 1, 2011 are distributed in check only.

D. Replacement of State Supplemental Payment Checks

1. Replacement of the Lost Checks
   a. When a recipient reports to the agency that s/he has not received an SSP check, or that such check was lost or destroyed after its receipt in the mail, DHS staff in the Office of Financial Management shall issue a stop payment order after verifying that the bank has not cashed the check.
   b. Office of Financial Management staff record the lost check and a replacement check is scheduled for the next scheduled monthly payroll.
   c. If a previously lost check is subsequently recovered and returned to the agency, it is sent to the Office of Financial Management for cancellation. Staff should write "VOID" on the check and return it with an AP-59.
2. Replacement of Stolen Checks
   a. When a recipient reports that they have not received an SSP check, the Office of Financial Management inquires with the bank to determine if the check has been cashed. If the check has been processed by the bank, staff in the Office of Financial Management forwards a copy of the cashed check to the DHS SSP Unit.
   b. The recipient is scheduled for an office interview and shown the transacted assistance check. If the recipient maintains that s/he did not cash or receive money from the check, s/he signs both copies of the Forged Check Affidavit (original signatures only). Both copies are sent to the CCR/Fred/Fraud Unit for review of signature and further action.
3. Recipient Receipt of Both Initial and Replacement Checks
   a. If the recipient acknowledges having cashed the check or received money from it, the social caseworker begins the process to recover the overpayment. In addition, the case must be referred to the CCR/Fred/Fraud Unit, regardless of the amount

of the overpayment, to determine if criminal prosecution is warranted.

b. If the SSP Social caseworker has initiated recovery, the CCR/Fred/Fraud Unit is informed of the referral.

4. Undeliverable Checks / Checks Returned by the Post Office

a. If the State Supplemental Payment (SSP) is undeliverable to the recipient and is returned by the Post office, the check will be returned to the Office of the General Treasurer.

i. The Office of the General Treasurer will forward the check to the DHS.

ii. The SSP social caseworker will verify the recipient's address through phone contact or InRhodes notice.

iii. If contact cannot be made with the recipient, the SSP account will be suspended and notice of the closure will be sent to the recipient.

b. In order to have the case re-opened, the applicant/recipient should contact the DHS and fill out a new enrollment form to ensure the recipient qualifies for SSP.

5. Bank Rejection of Direct Deposit

Individual or couples who receive direct deposit for their SSI payment will continue to have direct deposit for their State Supplemental Payment (SSP).

a. If the bank rejects the SSP direct deposit, a notice from the bank is sent to DHS Office of Financial Management.

b. DHS Office of Financial Management records returned direct deposits.

c. Replacement checks are issued in the next scheduled monthly payroll.

E. Retroactive Payments

1. The state will provide retroactive SSP payments back to the date an application for an individual or couple whose eligibility was either improperly denied or reduced in payment.

2. Retroactive payments will not be made for a period exceeding twelve (12) months.

F. Appeal and Fair Hearing

An individual or couple applying for or receiving state administered SSP has the right to appeal and have a fair hearing under Section 0110, Complaints and Hearings, of the DHS Code of Rules.

SECTION THREE SERVICE PROVISION

A. Eligibility for State Supplemental Payments

1. Individuals or couples receiving SSI are eligible for an SSP and include the following:
   a. Grandfathered SSI recipient – Individuals who received state assistance in December 1973 and became eligible for SSI in January 1974, are called grandfathered clients by the state and a mandatory income level (MIL) client by SSI;
      i. Such an individual must continue to meet the definition of blind or disabled that was in effect under the state plan in December 1973.
      ii. Individuals who are needed in the home to care for an eligible person are called an essential person. Such an individual is also called a grandfathered client.
      iii. Individuals who are an essential person must have lived continuously with the eligible person since January 1974.
   b. Individual who is age sixty-five (65) or older who receives SSI;
   c. Individual who is blind and receives SSI;
   d. Individual determined eligible for SSI due to disability; or
   e. Individual who receive SSI as a foster child receiving specific services through the state child welfare agency for part or all of a month and not eligible for foster care reimbursement under Title IV-E of the Social Security Act.
2. An individual or couple, residing in Rhode Island, who has been denied from SSA for excess income may be eligible for a State-Only Supplemental Payment and should complete an application at DHS to determine eligibility.
   a. An individual or couple must meet the technical requirements of citizenship, residence and possession of, or application for, a social security number of the Medical Assistance rules, as detailed in Section 0300.25.05 of the Code of Rules.
   b. An individual or couple must apply for SSI benefits through the SSA before applying for a State-Only Supplemental Payment.
      i. The denial letter, or proof of a denial determination, from SSA is required as part of the application process.

ii. A denial determination from SSA is valid for up to one year for purposes of application for SSP through DHS.

c. Applicants for SSP who have been denied through SSA for excess income will be processed as follows:

i. State income eligibility will be calculated (countable income must not exceed the combined Federal Benefit Rate (FBR) and applicable SSP);

ii. If applicant is eligible based on income the DHS will send a referral to the Medical Assistance Review Team (MART) for a disability determination;

iii. Once a determination is made by MART, eligibility for a State-Only payment is processed.

iv. Once eligibility has been determined, benefits will be issued the first of the following month of eligibility.

3. The DHS will notify the individual or each member of the couple of the eligibility determination for the SSP. If the eligibility for the SSP benefit has been approved, the DHS will mail a Benefit Statement to the recipient along with information on how the benefit was calculated. This Benefit Statement may be used as verification of the DHS SSP benefit and will remain valid for one (1) year or until the completion of the twelve (12) month redetermination, provided no subsequent reported or unreported changes affect the amount of the payment.

4. Applicants for SSP who have been denied through SSA based on a disability will not be reevaluated by DHS for disability based solely on the application for SSP. The DHS will review such applications and notify the applicant of his/her ineligibility at application for SSP-Only.

B. Recertification of State Supplemental Payments

1. State-Only SSP Redeterminations

a. Initial Eligibility Reviews:

The Department of Human Services (DHS) began the administration of the State Supplemental Payment to the eligible residents of Rhode Island on January 1st, 2011. These DHS SSP cases will be redetermined financially and medically, as appropriate, by the DHS within the first twelve (12) months of transfer from the SSA in a manner as soon as practicable.

b. Ongoing Financial Eligibility Reviews:
State-Only SSP cases require a twelve (12) month financial redetermination by DHS. The redetermination for State-Only SSP is completed by the DHS.

c. Continuing Disability Reviews:
The DHS MART will follow the rules set by 20 CFR, Section 416.990(b) regarding periodic reviews of disability or blindness to determine the need of ongoing assistance, refer to Section 0318 of the Medical Assistance Rules regarding Redetermination of Disability Determination. If the recipient is no longer disabled or blind, the State Supplemental Payment will stop.

2. SSI/SSP Redeterminations
Recipients receiving SSI will have redeterminations of both their SSI and State Supplemental Payment consistent with provisions established under the SSA, www.socialsecurity.gov.

3. Benefit Notice
Once the redetermination has been completed and approved, the DHS will notify the recipient of continued eligibility. The recipient will be mailed a new Benefit Statement with the calculation of the SSP payment. This Benefit Statement will be verification of the ongoing SSP payment and will remain valid until the next redetermination, provided no subsequent reported or unreported changes affect the amount of the payment.

C. Reporting Change in Circumstances

1. SSI/SSP Recipients - Individuals/couples who receive SSI are required to report changes directly to the SSA, refer to www.socialsecurity.gov.

2. State-Only Supplemental Payment - Individuals/couples are required to report changes in income, resources and living arrangement to the DHS staff within ten (10) days of the occurrence.

D. Representative Payee

1. An SSP is paid to a representative payee if:

a. The SSA determined that a representative payment is applicable under 20 CFR Part 404, Subpart U (relating to representative payment) or Part 416, Subpart F (relating to representative payment)

b. At the time of application for State-Only SSP, the applicant and/or recipient authorizes someone to

manage funds and to receive automated notices about the applicant's SSP benefit.

2. For SSI/SSP recipients, a representative payee is responsible for reporting to the SSA any changes in the recipient's circumstances that could affect eligibility. For State-Only SSP, a representative payee must report an address change to the DHS. All automated notices will be sent to the representative payee.

E. Scope of Services

Persons in Rhode Island who are eligible for either the Federal SSI payment and State Supplemental Payment, or the State-Only share of the SSP payment, may be eligible for Medical Assistance, Social Services, and for assistance to meet the following needs according to specified criteria. Agency personnel have responsibility in the authorization process to assure that recipients are properly assisted as determined by the provisions established in Section 0500 of the DHS Code of Rules, Social Service Program Manual.

1. Food Assistance
   a. In the event of un-received, lost, stolen or destroyed SSI checks and/or lost or stolen cash, the applicant/recipient is encouraged to complete an application for expedited food assistance through the Supplemental Nutrition Food Assistance Program.
   b. Applications for SNAP can be obtained at DHS Offices listed at www.dhs.ri.gov, or online at www.foodstamps.ri.gov.
2. Moving Assistance
   a. Payment for in-state moving, within cost guidelines, is provided for recipients of SSI when the move is determined to be socially desirable, the move cannot be provided by the city or town or other community resources, and the recipient requests vendor payment for the move.
   b. The agency makes no provision to meet the cost of out-of-state moves, refer to Section 0512 on Housing Services in the DHS Code of Rules.
3. Homemaker Services
   a. Homemaker Service is a social service available through DHS to recipients of SSI.
   b. Refer to the Social Services Program, Section 0530 in the DHS Code of Rules, for the criteria, determination of eligibility, cost and procedures for the authorization of Homemaker Service.

4. Burial Expenses
   a. The cost of burial can be met through General Public Assistance funds for any person who dies leaving no or insufficient resources to meet the expense.
   b. Refer to GPA Section 0620 of the DHS Code of Rules for the cost standards and conditions under which funeral and burial expenses can be met.
5. Emergency Assistance in the Event of a Catastrophe: Funds for shelter, clothing, food, essential household equipment, and furnishings, if necessary, are provided in the event of a catastrophe when all of the following conditions are met:
   a. An emergency is defined as the occurrence of a catastrophe caused by fire, flood, lightning, or severe wind. Compensable fire damage is further restricted to that caused by flame, smoke, and subsequent secondary water damage where there is damage to the dwelling. The incident must be reported immediately to the fire department. Other specific exclusions under any circumstances are destruction for which a landlord can be held responsible, willful destruction or willful neglect by the recipient or a member of his/her family, damage covered by insurance policies, and isolated mechanical or electrical failures where there is no secondary damage.
   b. Coverage is limited to possessions of the recipient or those of another member of the assistance unit.
   c. For active cases, the catastrophe or disaster must have occurred at the address recorded in the case record, or, if it occurred at a different address, the recipient must demonstrate that s/he had moved and was living there prior to notifying the agency. Acceptable evidence of residence may include a moving bill, rent receipt, or statement from a utility company attesting to the recipient's responsibility for service on the date and at the address in question. When the catastrophe occurred at an address other than the address of record, the facts of the situation along with verification of residence are presented to the Regional Manager for a decision on whether this condition for emergency assistance has been met.
   d. To be considered, the incident must be reported immediately by the recipient to the DHS.
   e. Community resources must first be explored and utilized, whenever possible.

f. Whenever reasonable, a partially destroyed item of household goods or furnishings must be repaired rather than replaced. If replacement is required, the purchase of used items must be considered before funds for new items can be authorized.

g. Any repairs to the basic structure of a recipient-owned dwelling, such as roof, stairs, septic systems, plumbing, wiring, siding, etc., are specifically not covered regardless of the reason for the repair.

h. Thefts of clothing, food, and household furnishings and equipment are specifically not covered.

i. If repeated emergencies occur for one case, or the circumstances are questionable, payment may be denied.

6. Items Provided in Event of Catastrophe

a. Emergency shelter, on a temporary basis, will be provided only where the damage to cooking or heating or plumbing facilities is severe enough to prevent their use in a minimally acceptable manner or the existing damaged structure either cannot provide adequate protection from the elements or is not safe to occupy. Approval for use of emergency shelter must be made on a daily basis by the social worker assigned to help the recipient relocate to permanent shelter.

b. Initial food and transportation for each recipient are provided from the date of the catastrophe through the fifth working day (or to the date of the next recurring SSI check, if earlier).

c. Initial clothing, if an individual recipient's clothing has been destroyed, can be authorized only to meet immediate clothing need.

7. Medical Care

The SSI recipient is certified for Medical Assistance concurrent with the determination of eligibility for SSI and may be eligible if receiving the State-Only Supplemental Payment. Refer to the Medical Assistance Program (Section 0300) for further information regarding medical assistance.

F. Estranged Spouses Receiving SSI as a Couple

1. Persons eligible for and receiving SSI benefits less than the appropriate GPA Standard of Need (see Section 0618), due to Federal SSI regulations which treat estranged spouses as a couple for SSI purposes until the month after the month they begin living apart are eligible for cash assistance, if they

meet the financial criteria outlined in Sections 0610 and 0612.

2. When there is an initial SSI application or an SSI reinstatement following a period of ineligibility, and the couple is not living together on the date of the application or date of request for reinstatement, the SSI regulations treat each member of the couple as an individual as of the date of the application or request regardless of how recently the separation occurred. Such individuals are not eligible for cash assistance from DHS.
3. Program eligibility when an SSI estranged spouse applies for assistance, DHS staff will:
    a. Determine that the couple has separated in the same month or before the month the application for assistance is received;
    b. Refer the applicant to the SSA office to notify the SSA of the change in the couple's living arrangements and to ensure the increase in the SSI payment begins the month after the separation;
    c. Review that the applicant's resources are within the limits outlined in Section 0610; and,
    d. Determine if the applicant's income (Section 0612) is less than the appropriate GPA Standard of Need as outlined in Section 0618.
4. Termination of Assistance
    a. Starting in the month after the month of the separation, each estranged spouse is treated as an individual claimant by the SSA for SSI payment purposes.
    b. Termination of program eligibility will, therefore, occur at the end of the month of separation.

SECTION FOUR **STATE PAYMENT TO ASSISTED LIVING FACILITIES NOT ELIGIBLE TO RECEIVE TITLE XIX FUNDING OF THE SOCIAL SECURITY ACT**

A. For Supplemental Security Income recipients who reside in a state licensed assisted living facility that is not eligible to receive funding under Title XIX of the Social Security Act (42 USC Section 1381 et seg.), an established monthly payment will be made to the facility for disabled and elderly individuals who, on or after July 1, 2012, receive the state supplementary assistance payment for an individual in state licensed assisted living residence under section 40-6-27.

1. State payments to non-Medicaid assisted living facilities are made directly to the facility on a monthly basis.
2. This payment is *equal to* two-hundred and six dollars ($206) per individual *per month* subject to available funding. The Department of Human Services is authorized to implement these payments subject to funding made available through the Rhode Island General Assembly.
3. Facilities will be required to provide a notarized certified statement to the Department documenting the number of residents that meet the eligibility criteria for this payment, within ten (10) business days of the first of each month.
4. The State shall make retroactive payments back to July 1, 2012 to facilities that provide the necessary documentation regarding eligible residents.

SECTION FIVE **STATE PAYMENT TO ASSISTED LIVING FACILITIES THAT ARE FINANCED BY THE RI HOUSING AND MORTGAGE FINANCE CORPORATION (RIHMFC)**

A. For Supplemental Security Income recipients who reside in a state licensed assisted living facility that is financed by the RI Housing and Mortgage Finance Corporation, an established monthly payment will be made to the facility for disabled and elderly individuals who, on or after October 1, 2014, receive the state supplementary assistance payment for an individual in state licensed assisted living residence under section 40-6-27.

1. State payments to RIHMFC financed assisted living facilities are made directly to the facility on a monthly basis.
2. This payment is *equal to* two-hundred and six dollars ($206) per individual *per month* subject to available funding. The Department of Human Services is authorized to implement these payments subject to funding made available through the Rhode Island General Assembly.

3. Facilities will be required to provide a notarized certified statement to the Department documenting the number of residents that meet the eligibility criteria for this payment within ten (10) cusiness days of the first of each month.
4. The state shall make retroactive payments back to October 1, 2014 to facilities that provide the necessary documentation regarding eligible residents.

Attachment 1

Rhode Island Federal Supplemental Security Income (SSI) and State Supplemental Payment (SSP) Rates

	Combined Federal/State		Federal		State Supplemental Benefit	
Living Arrangement	**Individual**	**Couple**	**Individual**	**Couple**	**Individual**	**Couple**
Living in Own Household	$~~760.92~~ 772.92	$~~1,161.38~~ 1,179.38	$~~721.00~~ 733.00	$~~1,082.00~~ 1,100.00	$39.92	$79.38
Living in Household of Another	$~~532.36~~ 540.59	$~~818.63~~ 915.93	$~~480.44~~ 488.67	$~~721.33~~ 733.34	$51.92	$97.30
Title XIX Facility	$50.00	N/A	$30.00	N/A	$20.00	N/A
Residential Care/Assisted Living	$~~1,053.00~~ 1,065.00	N/A	$~~721.00~~ 733.00	N/A	$332.00	N/A