



PROPOSED RULE MAKING

CR-102 (August 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 05, 2017

TIME: 12:32 PM

WSR 17-24-087

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 16-19-045 ; 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).

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 182-513-1505 Purpose; 182-513-1510 Definitions; 182-513-1515 Maximum fees and costs; 182-513-1520 Procedure to revise award letter after June 15, 1998, but before September 1, 2003; 182-513-1525 Procedure for allowing fees and costs from client participation after September 1, 2003; 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room or board on or after May 1, 2018

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 9, 2018	10:00 AM	Health Care Authority Cherry Street Plaza Sue Crystal Conf Rm 106A 626 8 th Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than January 10, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: (360) 586-9727

Other:

By (date) January 9, 2018

Assistance for persons with disabilities:

Contact Amber Lougheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: (800) 848-5429 or 711

Email: amber.lougheed@hca.wa.gov

Other:

By (date) January 5, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules have not been updated since 2003. The agency and the Department of Social and Health Services are amending these rules to: 1) remove outdated sections; 2) increase payments to guardians; 3) address current court orders that pre-date the new rules; and 4) establish a process for court orders entered after the new rules take effect (CR-103P effective date), which is anticipated to be May 1, 2018.

These amendments repeal 182-513-0505, 182-513-1510, and 182-513-1520, which are no longer necessary. WAC 182-513-1515 sets out the maximum amounts allowed before the effective date of the new rules. WAC 182-513-1525 describes the procedure for allowing fees and costs for court orders entered before the effective date of the new rules. WAC 182-513-1530:

1) removes the Health Care Authority and the Department of Social and Health Services from any role in determining reasonable compensation for a guardian; and 2) clarifies that the Health Care Authority determines what amounts may be retained by the person under guardian that would have otherwise been contributed to the cost of care or room and board. This rule also sets new maximum deduction amounts for orders entered after the effective date of the new rules.

The agency is filing these amendments in conjunction with the Department's proposal to create Chapter 388-79A Guardianship Fees for Medicaid Clients.

Reasons supporting proposal: The repealed sections are no longer needed because the information they contain is either found elsewhere in the amended rules or in other WAC chapters, or the applicable dates have passed. Amendments to WAC 182-513-1515 and 182-513-1525 are needed to replace provisions for court orders entered after 1998 and to remove the agency notice requirement from court proceedings to request extraordinary fees and costs, respectively. (These events happened in the past, the agency does not need notice.) The amendments to WAC 182-513-1530 are necessary to increase the maximum amount allowed to pay guardians and to make clear that the Health Care Authority does not deduct more than the allowed amounts from participation or room and board.

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

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

Name of proponent: (person or organization) Health Care Authority

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Melinda Froud	PO Box 42716, Olympia WA 98504-2716	360-725-1408
Implementation:	Stephen Kozak	PO Box 45534, Olympia WA 98504-5534	360-725-1343
Enforcement:	Stephen Kozak	PO Box 45534, Olympia, WA 98504-5534	360-725-1343

Is a school district fiscal impact statement required under RCW 28A.305.135?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:


COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. The proposed rules do not impose any costs on businesses
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: December 5, 2017	Signature: 
Name: Wendy Barcus	
Title: HCA Rules Coordinator	

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1515 Maximum guardianship fees and related costs before May 1, 2018. ~~((The superior court may allow guardianship fees and administrative costs in an amount set out in an order.))~~ (1) This section sets the maximum guardianship fees and related costs when:

(a) The court order was entered before May 1, 2018; and

(b) The client under guardianship was receiving medicaid-funded long-term care before May 1, 2018.

(2) For court orders entered ((after June 15, 1998)) before May 1, 2018, where the order establishes or continues a legal guardianship for a ((department client, and requires a future review or accounting; then unless otherwise modified by the process described in WAC 388-79-040:

(1) The amount of)) client:

(a) Guardianship fees ((shall)) must not exceed ((one hundred seventy five dollars)) \$175 per month;

((2) The amount of administrative)) (b) Costs directly related to establishing a guardianship for a ((department)) client ((shall)) must not exceed ((seven hundred dollars)) \$700; and

((3) The amount of administrative costs shall)) (c) Costs to maintain the guardianship must not exceed ((a total of six hundred dollars)) \$600 during any three-year period.

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1525 Procedure for allowing guardianship fees and related costs from client participation ((after September 1, 2003)) before May 1, 2018. (1) ~~((After September 1, 2003, where a client is subject to a guardianship the department shall be entitled to notice of proceedings as described in RCW 11.92.150.~~

~~(2) The notice must be served to the department's regional administrator of the program that is providing services to the client. A list of the regional administrators will be furnished upon request.~~

~~(3) If the fees and costs requested and established by the order are equal to or less than the maximum amounts allowed under WAC 388-79-030, then the department will)) This section describes the procedure for allowing guardianship fees and related costs from client participation when:~~

~~(a) A court order was entered before May 1, 2018; and~~

~~(b) The client under guardianship was receiving medicaid-funded long-term care before May 1, 2018.~~

~~(2) The medicaid agency or the agency's designee, after receiving the court order, adjusts the client's current participation to reflect the amounts, as allowed ((upon receipt by the department of the court order setting the monthly amounts.~~

~~(4) Should fees and costs in excess of the amounts allowed in WAC 388-79-030 be requested:~~

~~(a) At least ten days before filing the request with the court, the guardian must present the request in writing to the appropriate~~

regional administrator to allow the department an opportunity to consider whether the request should be granted on an exceptional basis.

(b) In considering a request for extraordinary fees or costs, the department must consider the following factors:

(i) The department's obligation under federal and state law to ensure that federal medicaid funding is not jeopardized by noncompliance with federal regulations limiting deductions from the client's participation amount;

(ii) The usual and customary guardianship services for which the maximum fees and costs under WAC 388-79-030 must be deemed adequate for a medicaid client, including but not limited to:

(A) Acting as a representative payee;

(B) Managing the client's financial affairs;

(C) Preserving and/or disposing of property;

(D) Making health care decisions;

(E) Visiting and/or maintaining contact with the client;

(F) Accessing public assistance programs on behalf of the client;

(G) Communicating with the client's service providers; and

(H) Preparing any reports or accountings required by the court.

(iii) Extraordinary services provided by the guardian, such as:

(A) Unusually complicated property transactions;

(B) Substantial interactions with adult protective services or criminal justice agencies;

(C) Extensive medical services setup needs and/or emergency hospitalizations; and

(D) Litigation other than litigating an award of guardianship fees or costs.

(c) Should the court determine after consideration of the facts and law that fees and costs in excess of the amounts allowed in WAC 388-79-030 are just and reasonable and should be allowed, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.

(5) In no event may a client's)) under WAC 182-513-1380, 183-515-1509, or 183-515-1514.

(3) A client's participation cannot be prospectively or retroactively reduced to pay guardianship fees and related costs incurred:

(a) Before ((the effective date of)) the client's long-term care medicaid eligibility effective date; ((or))

(b) During any ((subsequent)) time ((period)) when the client was not eligible for((7)) or did not receive long-term care services; or

(c) After the client has died. ((There is no client participation towards DDD certified and contracted supported living services under chapter 388-820 WAC, so the department has no responsibility to reimburse the client for guardianship fees when those fees result in the client having insufficient income to pay their living expenses.

~~(6) If))~~

(4) The fees and costs allowed by the court at the final accounting must not exceed the amounts advanced and paid to the guardian from the client's participation if:

(a) The court, at a prior accounting, ((has)) allowed the guardian to receive guardianship fees and related costs from the client's ((monthly income)) participation in advance of services rendered by the guardian((7)); and

(b) The client dies before the next accounting((7, the fees and costs allowed by the court at the final accounting may be less than,

~~but may not exceed, the amounts advanced and paid to the guardian from the client's income.~~

~~(7) Guardians must furnish the regional administrator with complete packets to include all documents filed with the court and with formal notice clearly identifying the amount requested)).~~

NEW SECTION

WAC 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room and board on or after May 1, 2018. (1) General information.

(a) This section sets the maximum guardianship fee and related cost deductions when:

(i) A court order was entered on or after May 1, 2018; or

(ii) The client under guardianship began receiving medicaid-funded long-term services and supports on or after May 1, 2018.

(b) This section only applies to a client who is:

(i) Eligible for and receives institutional services under chapter 182-513 WAC or home and community-based waiver services under chapter 182-515 WAC, and who is required to pay participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Eligible for long-term services and supports under chapter 182-513 or 182-515 WAC, and who is required to pay only room and board.

(c) All requirements of this section remain in full force whether or not the agency appears at a guardianship proceeding.

(d) In this section, the agency does not delegate any authority in determining eligibility or post-eligibility for medicaid clients.

(i) Under the authority granted by RCW 11.92.180, the agency does not deduct more than the amounts allowed by this section from participation or room and board.

(ii) The eligibility rules under Title 182 WAC remain in full force and effect.

(e) The agency does not reduce a client's participation or room and board under this section for guardianship fees or related costs accumulated during any month that a client was not required to pay:

(i) Participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Room and board under chapter 182-513 or 182-515 WAC.

(f) If the client has another fiduciary, payee, or other principal-agency relationship and the agent is allowed compensation, any monthly guardianship fee approved under this section is reduced by the agent's compensation.

(2) Maximum guardianship fee and related cost deductions.

(a) The maximum guardianship fee and related cost deductions under this section include all guardianship services provided to the client, regardless of the number of guardians appointed to a client during a period of time, or whether the client has multiple guardians appointed at the same time.

(b) Maximum guardianship fees and related cost deductions are as follows:

(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,400;

(ii) The total deduction for guardianship-related costs cannot exceed \$1,200 during any three-year period; and

(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$225 per month.

(3) For people under subsection (1)(b)(i) of this section - Participation deductions.

(a) After receiving the court order, the agency or its designee adjusts the client's current participation to reflect the deductions under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(b) The amounts of the participation deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

(c) For clients who pay room and board in addition to participation, if the client's amount of participation is insufficient to allow for the amounts under subsection (2) of this section, then, regardless of any provision of chapter 182-513 or 182-515 WAC, the client's room and board will be adjusted to allow the amounts under subsection (2) of this section.

(4) For people under subsection (1)(b)(ii) of this section - Room and board deductions.

(a) The agency adjusts the client's room and board after receiving the court order, regardless of any provision of chapter 182-513 or 182-515 WAC.

(b) The amounts of the room and board deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1505	Purpose.
WAC 182-513-1510	Definitions.
WAC 182-513-1520	Procedure to revise award letter after June 15, 1998, but before September 1, 2003.