



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: February 01, 2018

TIME: 11:05 AM

WSR 18-04-056

Agency: Health Care Authority

☐ Original Notice

☒ Supplemental Notice to WSR 17-24-087

☐ 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); or

☐ 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 June 1, 2018

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 13, 2018	10:00 AM	Health Care Authority Cherry Street Plaza <b>Sue Crystal Conf Rm 106A</b> 626 8 <sup>th</sup> Ave, Olympia WA 98504	Metered public parking is available street side around building. A map is available at: <a href="http://www.hca.wa.gov/documents/directions_to_csp.pdf">www.hca.wa.gov/documents/directions_to_csp.pdf</a> or directions can be obtained by calling: (360) 725-1000

Date of intended adoption: Not sooner than March 14, 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](mailto:arc@hca.wa.gov)

Fax: (360) 586-9727

Other:

By (date) March 13, 2018

Assistance for persons with disabilities:

Contact Amber Loughheed

Phone: (360) 725-1349

Fax: (360) 586-9727

TTY: (800) 848-5429 or 711

Email: [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov)

Other:

By (date) March 9, 2018

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

The agency previously held a hearing on the rules on January 9, 2018. The agency is filing this second CR-102 to clarify the purpose and effects of the proposed rules. The agency has considered all comments and testimony received from the prior hearing date. At this time, **the only change to the rules** from the previous public hearing **is the effective date**, which has changed from May 1, 2018 to **June 1, 2018**. The agency has not made any other revisions to the rule text to reflect changes that the agency may be considering.

The purpose of WACs 182-513-1505, 182-513-1510, 182-513-1515, 182-513-1520, and 182-513-1525 is to create a process that allows a Medicaid client to keep more of their income that would otherwise have been paid towards the client's cost of care, in order to compensate and reimburse their guardian. The purpose of new section WAC 182-513-1530 is to combine the former WAC sections and modify the existing process into one WAC section. The proposal clarifies that the decision about how much of a deduction should be made from a Medicaid client's participation or from the client's room and board is a decision that should be made by the agencies that administer Medicaid. The proposed rules do not set a maximum amount that the court can award for guardianship fees, but as of June 1, 2018, limit the guardianship fees and costs deduction from a client's participation and room and board to the maximum amount set by the agencies in the proposal.

The effects of this proposal: 1) repeal WAC sections that are no longer applicable; 2) increase the amount of income a Medicaid client can keep in order to compensate and reimburse their guardian; 3) establish a cutoff date where previously approved court orders are subject to current WAC (i.e. court orders approved before the effective date of new section WAC 182-513-1530 are grandfathered in under the current scheme); 4) make clear that the Court determines just and reasonable fees and costs for the guardian and the agency determines the amount a Medicaid client may retain of their own income; and 5) after June 1, 2018, the agency will no longer require advance notice of court proceedings regarding guardianship fees, because the rule will no longer allow for adjustment of clients' participation for guardianship fees based on determinations by the court that fees in "excess" above the regulatory maximum are "just and reasonable."

Changes that this proposal would include: 1) increasing the amount a Medicaid client can keep of their own income by increasing the limit of fees and costs for guardians compensation and reimbursement; 2) allowing a deduction to a Medicaid client's room and board liability, if needed, for guardianship fees and costs; 3) specifically limiting these rules solely to Medicaid eligibility groups that are required to contribute towards their care or shelter; and 4) clearly stating the Medicaid agency or the agency's designee determine the amount retained by the client for guardianship fees and costs, not the Court.

**Reasons supporting proposal:** Repealed sections WAC 182-513-1505, WAC 182-513-1510, and WAC 182-513-1520 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 WAC 182-513-1525: 1) remove processes that are no longer required after new section WAC 182-513-1530 is effective; and 2) make clear that court orders approved prior to the effective date of new section WAC 182-513-1530 are still regulated under the current scheme with no substantial changes.

New section WAC 183-513-1530 is proposed: 1) because the regulatory scheme was last amended in 2003, and costs for guardianships have increased; 2) to be specific on what Medicaid eligibility groups the rules applies to and whether "participation" or "room and board" deductions are allowed; 3) because it is inappropriate for the agency or the agency's designee to interfere with the Courts and guardians in determining what is just and reasonable under RCW 11.92.180; and 4) because it is the Medicaid agency that determines the amounts a Medicaid client retains that would have otherwise been contributed towards their cost of care.

**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)(e)  
(Dictated by statute)☐ RCW 34.05.310 (4)(c)  
(Incorporation by reference)☐ RCW 34.05.310 (4)(f)  
(Set or adjust fees)☐ RCW 34.05.310 (4)(d)  
(Correct or clarify language)☐ 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 rule does 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:** February 1, 2018

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**



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 June 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 June 1, 2018; and

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

(2) For court orders entered ((after June 15, 1998)) before June 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 June 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 June 1, 2018; and

(b) The client under guardianship was receiving medicaid-funded long-term care before June 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((,)) 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((,)); and

(b) The client dies before the next accounting((, 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 June 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 June 1, 2018; or

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