



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 24, 2018

TIME: 9:52 AM

WSR 18-10-024

Agency: Health Care Authority

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) June 1, 2018 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The agency is amending and repealing WACs to create a process that allows a Medicaid client to keep more of their income that would have otherwise been paid towards the client's cost 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.

Citation of rules affected by this order:

New: 182-513-1530
 Repealed: 182-513-1505, 182-513-1510, 182-513-1520
 Amended: 182-513-1515, 182-513-1525
 Suspended:

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-04-056 on February 1, 2018 (date).
 Describe any changes other than editing from proposed to adopted version:

Proposed/Adopted	WAC Subsection	Reason
Original 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		
Proposed	(2)(b)(i)The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,400.	The agency increased the maximum deduction allowed to establish a guardianship based on stakeholder comments.
Adopted	(2)(b)(i)The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,400 <u>\$1,850</u> .	
Proposed	(2)(b)(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$225 per month.	The agency increased the maximum monthly deduction for guardianship fees based on stakeholder comments.
Adopted	(2)(b)(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$225 <u>\$235</u> per month.	

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

**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	___	Repealed	___

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

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

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

New	<u>1</u>	Amended	<u>2</u>	Repealed	<u>3</u>
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>1</u>	Amended	<u>2</u>	Repealed	<u>3</u>

Date Adopted: April 24, 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((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 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 \$1,850;

(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 \$235 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.