

# Chapter 388-79 WAC

## GUARDIANSHIP FEES FOR CLIENTS OF THE DEPARTMENT

### WAC

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**WAC 388-79-010 Purpose.** These rules implement RCW 11.92.180 and 43.20B.460 to the extent that those statutes require the department to establish by rule the maximum amount of guardianship fees and additional compensation for administrative costs that may be allowed by the court for a guardian or limited guardian of an incapacitated person who is a Medicaid client of the department and is thus required by federal law to contribute to the cost of the client's long-term care.

[Statutory Authority: RCW 11.92.180, 43.20B.460. WSR 03-16-022, § 388-79-010, filed 7/28/03, effective 8/28/03; WSR 98-10-055, § 388-79-010, filed 4/30/98, effective 5/31/98.]

**WAC 388-79-020 Definitions. "Administrative costs" or "costs"** means necessary costs paid by the guardian including attorney fees.

**"Client"** means a person who is eligible for and is receiving Medicaid-funded long-term care.

**"Guardianship fees" or "fees"** means necessary fees charged by a guardian for services rendered on behalf of a client.

**"Participation"** means the amount the client pays from current monthly income toward the cost of the client's long-term care.

[Statutory Authority: RCW 11.92.180, 43.20B.460. WSR 03-16-022, § 388-79-020, filed 7/28/03, effective 8/28/03; WSR 98-10-055, § 388-79-020, filed 4/30/98, effective 5/31/98.]

**WAC 388-79-030 Maximum fees and costs.** The superior court may allow guardianship fees and administrative costs in an amount set out in an order. For orders entered after June 15, 1998, 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 guardianship fees shall not exceed one hundred seventy-five dollars per month;

(2) The amount of administrative costs directly related to establishing a guardianship for a department client shall not exceed seven hundred dollars; and

(3) The amount of administrative costs shall not exceed a total of six hundred dollars during any three-year period.

[Statutory Authority: RCW 11.92.180, 43.20B.460. WSR 03-16-022, § 388-79-030, filed 7/28/03, effective 8/28/03; WSR 98-10-055, § 388-79-030, filed 4/30/98, effective 5/31/98.]

(7/28/03)

**WAC 388-79-040 Procedure to revise award letter after June 15, 1998, but before September 1, 2003.** After June 15, 1998, but before September 1, 2003, where a department client is subject to a guardianship then the department shall be entitled to notice of proceedings as described in RCW 11.92.150.

(1) The notice shall be given to the appropriate regional administrator of the program serving the department client. A list of the regional administrators will be available upon request.

(2) If the fees and costs requested and established by the order are equal to or lower than the maximum amount set by this rule then the award letter or document setting the department's client's participation shall be adjusted to reflect that amount upon receipt by the department of the court order setting a monthly amount.

(3) Should fees and costs above those requested in WAC 388-79-030 be requested:

(a) The appropriate regional administrator will be given notice of the hearing as described in RCW 11.92.150, and provided with copies of all supporting documents filed with the court.

(b) Should the court determine after consideration of the facts, law and evidence of the case, that fees and costs higher than normally allowed in WAC 388-79-030 are just and reasonable and should be allowed then the award letter or document setting the department client's participation shall be adjusted to reflect that amount upon receipt by the department of the court order setting a monthly amount.

[Statutory Authority: RCW 11.92.180, 43.20B.460. WSR 03-16-022, § 388-79-040, filed 7/28/03, effective 8/28/03; WSR 98-10-055, § 388-79-040, filed 4/30/98, effective 5/31/98.]

**WAC 388-79-050 Procedure for allowing fees and costs from client participation after September 1, 2003.**

(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 adjust the client's current participation to reflect the amounts 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

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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 participation be prospectively or retrospectively reduced to pay fees and costs incurred before the effective date of the client's medicaid eligibility; or during any subsequent time period when the client was not eligible for, or did not receive long-term care services; or 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 the court at a prior accounting has allowed the guardian to receive fees and costs from the client's monthly income in advance of services rendered by the guardian, and 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.

[Statutory Authority: RCW 11.92.180, 43.20B.460. WSR 03-16-022, § 388-79-050, filed 7/28/03, effective 8/28/03.]