



STATE OF WASHINGTON
HEALTH CARE AUTHORITY

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April 20, 2018

TO: Interested Persons

FROM: Melinda Froud
Rules and Publications
Division of Legal Services

SUBJECT: CONCISE EXPLANATORY STATEMENT (*RCW 34.05.325*)
For Rules Not Considered Significant
For Rules Proposed as WSR 18-04-056

WAC(s): 182-513-1515 - Maximum guardianship fees and related costs before June 1, 2018;
182-513-1525 - Procedure for allowing guardianship fees and related costs from client participation before June 1, 2018
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

REASON FOR ADOPTION: 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 of care, in order to compensate and reimburse their guardian. The purposes of new WAC 182-513-1530 is to combine former WAC sections and modify the existing process into one WAC section.

Additionally, the rules now allow the Health Care Authority (HCA) and the Department of Social and Health Services (Department) to reduce a client’s room and board obligation to compensate a guardian and pay a guardian’s attorney fees. This practice was allowed before solely by exception to rule. Rules regarding this practice should standardize it statewide and provide for some predictability in how room and board will be reduced.

Finally, the rules remove the determination of the size of the participation reduction from the guardianship matter in superior court. The rules do not contradict a court’s power to determine the amount of a “just and reasonable” guardianship fee or attorney fees for a guardian, but under the new rules, the amount of participation or room and board deduction will not be dependent on the court’s determination of what fees are just and reasonable.

The Department and HCA anticipate that guardians will have their fees approved by the appropriate court as just and reasonable. The guardian will then send the order to the appropriate Department official, who will approve a participation or room and board deduction, under the rules, up to the just and reasonable amount or the maximum amount allowed under the rules—whichever is less. This will prevent the agency from having to appear at numerous court hearings to object to fees the agency finds objectionable.

It is also anticipated that this change will slow the growth of guardian fees and guardian’s attorney fees, which have grown significantly in recent years. The Department has no specific allocation in its budget for guardian fees or guardian’s attorney fees—these expenses come from the legislature’s appropriation for long-term care services generally. This change is expected to free resources that can be used toward paying for the direct long-term care services that Department clients need.

CHANGES MADE SINCE THE RULE WAS PROPOSED: (check one)

- The text being adopted does not differ from the text of the proposed rule.
- The text being adopted contains only editorial changes from the proposed rule.
- The text of the adopted rule varies from the text of the proposed rule. The changes (other than editing changes) follow:

WAC 182-513-1530(2)(b)(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed ~~\$1,400~~ \$1,850.

WAC 182-513-1530(2)(b)(iii) The amount of the monthly deduction for guardianship fees cannot exceed ~~\$225~~ \$235 per month.

The advance fee deduction changed from \$225 to \$235 because the cost of living increased since the rule was first proposed. The one-time establishment cost deduction increased from \$1,400 to \$1,850 because data and stakeholder feedback showed the methodology used to increase the triennial cost deduction was not sufficient for the one-time cost deduction.

SUMMARY OF COMMENTS RECEIVED FROM THE JANUARY 9, 2018 AND MARCH 13, 2018 HEARINGS¹

COMMENTS RECEIVED	THE AGENCY CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
Legislature and multi-agency involvement	
A stakeholder said that the problem isn’t just the need to increase guardianship fees; the volume of low income guardianship clients is at a crisis. The Public Guardianship Program needs to be used more strategically. The Guardian Board needs to make a provision for guardians that provide a limited level of services. These groups should be working on a plan. To have on agency unilaterally	No changes were made to the rules as a result of these comments. The Health Care Authority (HCA) and the Department of Social and Health Services (DSHS) have worked together on these rules, as DSHS has the statutory authority to enact these rules and HCA is the Medicaid agency. Statute

¹ The agency held a second hearing in response to stakeholder comments that the CR-102 for the January 9, 2018 hearing did not make clear that the proposed rules would repeal WAC 182-513-1525(4)(c), which authorized superior courts to exceed maximum fees and costs.

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<p>make determinations will not get anyone anywhere.</p> <p>Another commenter suggested that the rules should not be adopted because the legislature, DDA, ALTSA, and HCA should review this matter more thoroughly before making these drastic changes.</p>	<p>limits what rules HCA and DSHS can promulgate regarding Medicaid and guardianships. HCA and DSHS have no statutory authority to enact rules for the Office of Public Guardianship (OPG) and the Guardian Board.</p> <p>These rules merely cover deductions to a person’s income that would otherwise be paid towards that person’s cost of care or room and board when on a Medicaid long-term care program.</p> <p>Unless the legislature amends the statutory authority for HCA and DSHS, or the public guardianship scheme in Washington, the subject rules are limited to this scope.</p>
Superior court oversight	
<p>Authority for these expenses should be with the courts to ensure access to justice.</p> <p>A stakeholder commented that the rules amplify the power of DSHS and decrease the power to negotiate with the agency. Up to now, the court has had the authority to determine attorney and guardianship fees. The stakeholder wants the courts to remain in charge of determining both the attorney fees and the guardianship fees.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The agency is not dictating the amounts established by the courts, it is setting the amount that can be deducted in a post-eligibility calculation.</p> <p>RCW 11.92.180 and RCW 43.20B.460 allow DSHS to set limits on guardianship fees and costs (including attorney’s fees). Under the WAC amendments and new WAC section, DSHS and HCA no longer set the limits for fees and costs approved by the courts. By purposefully being silent on the maximum fees and costs that can be approved by the courts, DSHS and HCA are removed from any oversight role over the court’s decision, and the decision on approval for fees and costs is between the court and the guardian.</p> <p>Where the existing rules have a maximum amount for “usual and customary” guardianship services, there is no maximum in the new rule because HCA and DSHS believe this decision should be up to the guardian and the courts.</p> <p>The current rule has a process to determine if the</p>

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	<p>maximum can be exceeded, which is justified by “extraordinary” guardianship services. This is removed because DSHS and HCA believe the court should determine the amount, regardless of the level of services provided by the guardian.</p> <p>The new rule sets limits on the deduction for guardianship fees from a Medicaid client’s participation and room and board because HCA, with DSHS as designee, is the Medicaid agency, and the Medicaid agency should be the decision-maker for Medicaid eligibility calculations.</p> <p>However, DSHS and HCA understand there cannot be one rule to cover every scenario in any facet of Medicaid, including clients with guardians. For all Medicaid eligibility rules, including the ones in this rulemaking, there is an exception process outlined under WAC 182-503-0090. Guardians may request an exception to the amounts in the rules if the individual’s circumstances meet the requirements.</p>
<p>Several stakeholders want the provision that allows guardians to ask the courts for extraordinary fees and costs.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The federal Medicaid regulatory authority (The Centers for Medicare and Medicaid Services – CMS) requires there be a single state agency for Medicaid. It would not be appropriate for the Court to determine the amount of a Medicaid calculation’s deduction, as this would be contrary to federal rule.</p> <p>With the new rules, the court may approve just and reasonable fees and costs. When these approved fees and costs exceed the new rule’s limits, the guardian may request an exception to rule (ETR) under WAC 182-503-0090. In some cases, the court may approve fees that will not be deducted from the Medicaid beneficiary’s participation or room and board. HCA and DSHS believe it is appropriate to put a cap on what the Medicaid program will accept as a reasonable</p>

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	deduction to participation and room and board in order to conserve resources that may otherwise be spent on direct client care.
Extraordinary costs	
<p>Several stakeholders stated that there are no ordinary cases, and there needs to be the ability and flexibility to pay guardians beyond the standard amount for unusual circumstances. The rules impose an inequitable “one-size-fits-all” limit on financial support from client funds.</p> <p>If the agency starts limiting things like fees, it’s not taking into consideration the individual needs of each person – this limits flexibility in the special needs community.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The clients subject to these rules are already considered extraordinary when compared to the population at-large. First, they are indigent, as they are eligible for Medicaid. Second, they meet the functional need of Medicaid long-term services and supports and need assistance with their daily activities. Finally, the Court has determined them to be incapacitated, and that a guardian is needed for either their person, estate, or both.</p> <p>HCA and DSHS acknowledge this population has higher personal needs than those in the same position without a guardian. To compensate and reimburse guardians, HCA has amended our Medicaid state plan and waivers, with permission from CMS, to allow the clients to retain more income than their peers (without guardians) on Medicaid.</p> <p>CMS requires a reasonable standard based on this higher need, which is in the amended and new rules. We acknowledge there are even extraordinary cases beyond this extraordinary group. As explained above, an ETR process under WAC 182-503-0090 exists for cases that meet the ETR criteria.</p>
<p>There should be a process to appeal the fee cap. The appeal could occur before extraordinary fees are incurred and include a meaningful review.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>A guardian who believes their work and their client’s needs are exception can request an ETR for the fee caps under WAC 182-503-0090 (exceptions to rule).</p>
<p>The rules prioritize the interest of HCA to collect</p>	<p>No changes were made to the rules as a result of</p>

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<p>participation over the needs of the client. DSHS' interest in sustaining its budget and being in compliance with HCA conflicts with its duty to protect client interests, which is why guardianship and access to the court system is essential. The rule prevents DSHS from addressing clients' needs that exceed the limits of what Medicaid pays.</p>	<p>these comments.</p> <p>DSHS and HCA do not agree that increasing the deduction for fees and costs the guardians can receive, and removing themselves from the court process to determine fees, prioritizes the interests of HCA and DSHS over the clients' interests.</p> <p>Medicaid does not pay or provide for guardianships for Medicaid clients. As the Medicaid agency and its designee, HCA and DSHS are determining what is allowed as a deduction in the Medicaid calculation for client participation. The guardianship-related needs of Medicaid clients, outside of a participation deduction, are not within the scope of this rule.</p>
Amounts for court orders before May 1, 2018*	
<p>A stakeholder was puzzled and asked about revisions to 182-513-1515 and -1525: will court orders previously approved at a higher amount will go back to the lower \$175 amount because the orders are old?</p> <p>That seems to exercise futility. The stakeholder suggested the agency explore revisions that would not include -1515 and -1525.</p> <p>* This rule was originally proposed with an effective date of May 1, 2018, and these comments are in response to that hearing. That date changed to June 1, 2018, when the agency proposed the rule again for the March 13, 2018, hearing.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The amendments and new section are very specific on how to treat court orders approved before these rules are effective. Court orders approved before the effective date of these rules would follow the maximum amounts set out in WAC 182-513-1515, which are the same amount as in the rules when last amended in 2003. The amounts would not exceed \$175 per month because that is what the rule provides. Court orders approved after the effective date are treated under the new rule (WAC 182-513-1530).</p> <p>There will be no change to the treatment of existing court orders for the current guardianship accounting period.</p>
Proposed guardian rates	
<p>A stakeholder asked what methodology was used to arrive at the amounts in the proposed rules and whether the state conducted studies or surveyed private guardians to determine the impact of the rule</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The agency revised the maximum monthly guardianship fee and the establishment cost deductions; see detailed information below.</p>

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	<p>For the fee advance deduction, the agency used the Consumer Price Index - Urban (CPI-U) to calculate the increase. The base year was September 2003, when the rules were last amended. The agency calculated the percentage the CPI-U increased from the base year until late 2017 to determine the advance fee deduction of \$235.</p> <p>For the triennial cost deduction, the agency took a sample of 50 guardianship cases from the pool of approximately 2,500 clients. The agency reviewed the most recent triennial accounts for approved costs. For sample cases where there were no costs awarded, the agency removed the sample and pulled an additional case.</p> <p>The agency calculated average triennial costs of approximately \$1,120 and concluded that \$1,200 was a reasonable amount for the triennial cost deduction. The agency considered feedback of professional guardians and attorneys regarding the cost to establish a guardianship. The agency initially doubled the amount using the same methodology as the triennial cost deduction, but then increased it once more to \$1,850 following the hearing comments.</p>
<p>A stakeholder was unclear about and wanted to see the rules address what happens when a guardianship client receives an income source asset that may manifest into funds. Could the Department make some opportunity for the guardian to receive payment from those new funds – especially if the guardian was an important part of acquiring the asset?</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>If a client has a source to satisfy fees and costs of the guardian, other than a deduction to participation or room and board, it is up to the guardian and the court to determine whether this source should supplant or supplement the allowed deductions per this rule. The rates in the new section are completely independent from what the court decides is just and reasonable. The rules set the maximum deduction in a Medicaid calculation, and do not limit the courts in any way.</p>

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	As a general example, a guardian could allow liquidation of an asset excluded by Medicaid (such as a car), and use the proceeds to compensate and reimburse the guardian.
<p>Several stakeholders said the proposed amounts are insufficient and do not cover the costs of administering a guardianship. The proposed amounts will not adequately serve client needs, and the risk of harm to clients is substantial.</p> <p>The amount of \$250 per month is minimally adequate in most routine guardianship cases, but \$225 is too low.</p>	<p>The agency revised the maximum monthly guardianship fee and the establishment cost deductions.</p> <p>The purpose of the rule amendments is not to determine fair and reasonable compensation for a guardian. The purpose is to establish a reasonable Medicaid deduction that complies with federal statute and regulations.</p> <p>Based upon our review of how other states reimburse guardians, Washington State is one of the more generous. Other states allow much lower amounts, if any.</p>
One stakeholder said that a lot of parents of special needs children don't understand why the rules are being changed.	<p>No changes were made to the rules as a result of these comments.</p> <p>The rulemaking process under the Administrative Procedure Act requires HCA explain why the rules are being changed. You can view the reasons why on HCA's or the Washington State Register's website under filings WSR 16-19-045 and WSR 18-04-056.</p>
<p>Another stakeholder said that the Office of Public Guardianship (OPG) has a different fee structure. OPG would be a place to start in looking at what a reasonable fee structure might be for establishing guardianship. Another stakeholder said that for cases without extraordinary fees, 80% of the guardians might be able to live with this if the figures could be closer to the OPG figures; they have a system that gets really close to what the majority of guardianship cases would cost to manage.</p> <p>A stakeholder noted the OPG is not as robust as we would like it to be. Nobody wants to be an OPG</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>OPG and Medicaid have completely different approaches to guardianship and funding. OPG is a completely separate agency under the Administrative Office of the Courts, and subject to its own statutory authority. OPG contracts with guardians to provide services to incapacitated people. In contrast, HCA and DSHS allow a deduction to a Medicaid client's participation or room and board in order to allow the client, themselves, to compensate and reimburse their guardian.</p>

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guardian; a guardian receives \$400 per year through OPG to represent a client and then there is no more funding.	
Capacity for guardianships	
<p>Several stakeholders noted that professional guardians will be unwilling or unable to accept new Medicaid appointments if the fees are capped with no recourse to go to the courts for extraordinary costs. It is already difficult at times to find guardians willing to serve.</p> <p>One stakeholder said that because of the listserv and the dialogue that has gone on, guardians are not going to take Medicaid clients any more.</p> <p>Several stakeholders said they cannot take cases where they are constantly losing money or will lose money to provide these services.</p> <p>Professional guardians are going to say “no” to Adult Protective Services and others if the courts’ ability to exceed regulatory caps is eliminated.</p>	<p>The agency revised the maximum monthly guardianship fee and the establishment cost deductions.</p> <p>The Medicaid population on long-term care is small, and the number of people that can contribute to the cost of guardianship services through participation or room and board deduction is even lower.</p> <p>These rules are not intended to address the bigger problem of inadequate funding for public guardianships to serve the multitude of low income people who need guardianship services. The rules address the amount of fees that may be paid as a deduction from clients’ participation or room and board.</p> <p>These rules in no way limit the recourse a guardian has to approach the courts over what can be approved as “just and reasonable” under fees and costs RCW 11.92.180. However, the rules do regulate a deduction in a Medicaid calculation, which is independent of what a Court approves as just and reasonable. In addition, the rules are much clearer in describing what the court can and cannot do for Medicaid eligibility and post-eligibility determinations. The amount of just and reasonable guardianship fees and costs is determined by the court; and eligibility determinations (e.g., amount of income, countable income) and post-eligibility determinations (order of deductions, amount of deductions for guardianship fees and costs) are under the authority of the Medicaid agency (HCA) and its designee (DSHS).</p>
Superintendent’s fiduciary duties	
The proposed rules fail to account for specific	No changes were made to the rules as a result of

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<p>statutes that appertain to residential habilitation centers (RHC) residents' funds, including the Superintendent's fiduciary duties under the DSHS Secretary's duties under RCW 71.A.100 [sic].</p>	<p>these comments.</p> <p>Title 71A RCW is outside the scope of this rule.</p> <p>The proposed rules are under the authority of RCW 43.20B.460 and RCW 11.92.180, and apply to persons eligible for long-term care (LTC) Medicaid under:</p> <ul style="list-style-type: none"> • Chapter 182-515 WAC (42 C.F.R. 435.217); or • Chapter 182-513 WAC (§1902(a)(10)(A)(ii)(V) of the Social Security Act); and who have participation under: <ul style="list-style-type: none"> ○ WAC 182-515-1509 or WAC 182-515-1514 (42 C.F.R. 435.726), or ○ WAC 182-513-1380 (42 C.F.R. 435.725).
<p>The rules should be amended to indicate they do not apply to RHC residents and should cross-reference relevant statutes.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The agency disagrees that these rules do not apply to RHC residents; they apply to any individual in an institution who is eligible for Medicaid under §1902(a)(10)(A)(ii)(V) of the Social Security Act, and who is required to contribute towards the cost of care under federal rule. (See also 42 CFR 435.725 and WAC 182-513-1380.)</p>
<p>Who is representing the residents' interests in this rulemaking process? The Superintendent, as the statutory fiduciary, has been conspicuously absent in the process.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>DSHS is one agency and the interests of the RHCs and all of the duties of the RHCs have been appropriately considered in this rulemaking</p>
<p>Groups at the RHCs were not informed by DSHS or HCA about the rule changes involving residents' funds.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The agency complied with all notice requirements under the Administrative Procedure Act for this rulemaking. Additionally, members of the public had the opportunity to sign up for a listserv to</p>

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	receive email notices of formal rulemaking activities.
Access to Courts	
<p>This rule would effectively prevent indigent people with intellectual and physical developmental disabilities from access to the court system and the advocacy of a guardian.</p> <p>The allowed amount of \$400 per year for legal fees is draconian and interferes with the resident's access to the courts.</p> <p>The only people who will have access to the court will be people with trust funds. This is grossly unfair, sort of like tort reform for the poor, and the stakeholder objects to this.</p> <p>RHC residents may be wholly unable to make decisions, and guardianship is an essential form of support for persons with intellectual disability.</p> <p>This revised rule would place people with profound and severe intellectual disabilities in a position similar to children abandoned by their parents; the needs of these people would go unmet.</p>	<p>The agency revised the maximum monthly guardianship fee and the establishment cost deductions.</p> <p>The purpose of these rules is not to determine a fair and reasonable compensation for a guardian, subsidize access to the courts, nor provide a system for decision-making. Neither HCA nor DSHS pay for a client's guardianship needs. The funds for guardianship fees and costs came from, and will continue to come from, the client's own income.</p> <p>The purpose of the rule is to establish a reasonable Medicaid deduction, for a person with needs higher than that of their peers, which complies with federal statute and regulations. The deduction diverts income that otherwise would have been paid towards the cost of LTC Medicaid, in order to allow the person to pay for guardianship services. Medicaid is intended to assist indigent people pay for the cost of medical assistance. It is appropriate that the focus of Medicaid benefits continue to be on the provision of medical assistance.</p> <p>The amount of an attorney's reimbursement is an agreement between the guardian and their attorney. DSHS and HCA are not parties to these contracts and have no say in their reimbursements.</p>
Invoicing	
<p>A stakeholder thinks DSHS should allow guardians and attorneys to forgo invoicing, as the new fee caps essentially constitute a flat rate.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The requirements for guardian invoices are outside the scope of this rulemaking.</p>
Self-support	
<p>Limiting clients' use of their own funds for guardianship expenses is oppressive and risks loss</p>	<p>The agency revised the maximum monthly guardianship fee and the establishment cost</p>

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<p>of guardianship, does not account for the increasing cost of legal services (and limited client funds), and allows only a small amount of the client’s funds to be used for their benefit.</p> <p>Rather than finding a way to ensure there are ample supports in place, ALTSA and HCA propose to restrict the amount of self-support to an arbitrary and ridiculous amount of total income. The purpose of the rule is to presumably make more money to save money and increase the funds available to the State, at the clients’ expense.</p>	<p>deductions.</p> <p>HCA and DSHS acknowledge this population has higher personal needs than those in the same position without a guardian. To compensate and reimburse guardians, the agencies have amended the Medicaid State Plan and waivers, with permission of the Centers for Medicare and Medicaid Services (CMS), to allow the clients to retain more income than their peers (without guardians) on Medicaid. CMS requires a reasonable standard based on this higher need, which is in the amended and new rules.</p> <p>Additionally, the amounts do take into account increasing costs by using the CPI-U to adjust the fee deduction, and a random sample of 50 guardianship cases for the cost deductions.</p> <p>The amounts in the proposed rules do not decrease the total amount that DSHS pays, and the amendments to this chapter will actually increase the amount DSHS expends. Because the deduction amounts are increased and now allowed from room and board, a client keeps more of their income. In turn, DSHS pays more for their cost of long-term care.</p>
Post-eligibility	
<p>The proposed rules should be amended to remove mention of the post-eligibility process because the state does not submit guardianship expenses as a deduction in the post-eligibility process.</p> <p>The post-eligibility process only applies to certain individuals, and the proposed rule appears to include all persons in the RHCs, regardless of Medicaid eligibility group. The rule should be amended to reflect that the post-eligibility process is limited to the groups set forth in the CFR.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>42 CFR 435.725 applies to certain groups of individuals in medical institutions eligible for Medicaid under §1902(a)(10)(A)(ii)(V) of the Social Security Act. The WAC for these individuals’ post-eligibility process is 182-513-1380. Only people in Residential Habilitation Centers (RHCs) subject to this WAC have a higher personal needs allowance (PNA) to account for a deduction for guardianship costs. HCA/DSHS does claim federal match for the increased costs due to raising of the PNA. These rules do not regulate any other Medicaid-eligible</p>

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	individual in an RHC.
Reduction of Social Security Funds	
<p>Several stakeholders acting as guardians for family members commented that the agencies were taking away income or reducing the amount of income that could be paid. They also commented that the funds are inadequate.</p> <ul style="list-style-type: none"> • The agency’s proposed rules stop payment for the court proceedings required to maintain the guardianship and strip away fees that help with expenses. • HCA is planning to take more Social Security money for the State Treasury, leaving less money for guardianship expenses. If the agency takes this money, who will pay? Fees related to guardianship will need to be paid out-of-pocket, and social security funds received are ridiculously low. • It is imperative that the funds guardians can deduct not be reduced; family members rely on social security funds to pay guardianship costs. Do not allow the state to take advantage of people at the guardians’ expense. Reducing the amount to \$1,200 every three years is not adequate to pay for guardian reports. 	<p>The agency revised the maximum monthly guardianship fee and the establishment cost deductions.</p> <p>To clarify, DSHS and HCA are not taking Medicaid clients’ income. Responsibilities of a Medicaid client on LTC include sharing the cost of LTC with DSHS. Based on a person’s countable income, DSHS calculates the amount a person pays for their care, and any remaining LTC costs are paid for by Medicaid. These rules allow a deduction of the amount the client would have otherwise paid towards their LTC services.</p> <p>DSHS and HCA have never paid for court proceedings; the rules allow deductions for clients’ income in order to compensate and reimburse their guardians. Additionally, the agency is increasing the deductions, allowing guardians to be paid and reimbursed more.</p> <p>As explained above, HCA and DSHS believe the amounts are reasonable and in-line with federal requirements regarding deductions to participation. If the amounts are inadequate in an extraordinary case, the guardian can request an exception to the limits under WAC 182-503-0090.</p>
Personal Needs and Incidentals	
<p>A stakeholder commented that the monthly amount was insufficient to provide for personal needs and incidentals for the client.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>The intent of the deductions is to compensate the guardian for their work and to reimburse the guardian for incurred expenses (such as mileage, attorney’s fees, and filing fees), not for the client’s personal needs or incidentals (such as food, clothing, and entertainment).</p>
Legal Services and Fees	
<p>A stakeholder noted that the increasing complexity of guardianship cases increases the cost of legal</p>	<p>No changes were made to the rules as a result of these comments.</p>

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<p>services. The trend is that legal expenses for Medicaid recipients is increasing.</p> <p>DSHS has followed court-approved increases. It is not unusual for the court to approve approximately \$2,000 for a three-year report. The current process has worked well, and there are sufficient resources available to pay for guardian reporting.</p>	<p>If there is an increase in complexity that increased the costs of legal services for guardianships, it was captured in the data collected for determining the new cost deductions.</p> <p>The data includes approved fee and costs deductions for approximately 2,500 clients over the course of several months, a random sample of cases showing what the court approved for costs, and calculations of the increase of cost-of-living since the last amendment of these rules.</p> <p>The data showed that the increases to the deductions for fees, recurring costs, and establishments costs were reasonable for the vast majority of cases.</p> <p>HCA and DSHS feel the data is more reliable than anecdotal evidence. Additionally, the resources available to pay guardians is completely dependent on the incapacitated person's income, as HCA or DSHS do not pay guardians.</p> <p>HCA and DSHS disagree that the current process has worked well. Not only is significant effort expended holding guardians and their attorneys accountable in court, but DSHS also spends many resources explaining the nuances of Medicaid law and rule to various courts across the state. Additionally, the current rules have been interpreted by many courts to say the court has the final determination of the participation deduction, when the original intent was for DSHS to have that authority.</p> <p>HCA and DSHS believe the solution is to remove the agencies question of what a proper deduction from participation and room and board is from the court's determination of guardianship fees and costs, and let the court decide what is just and reasonable. HCA and DSHS will subsequently reduce participation and room and board</p>

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	<p>according to standards set under these new and amended rules.</p> <p>In cases where the guardian believes there are extraordinary circumstances to justify exceeding the deduction limits, the guardian may request an exception to rule under WAC 182-503-0090.</p>
<p>The rules should include a savings clause so that HCA abides by court orders entered under current WACs. Without this, the rules will reduce the amount available for legal services.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>It is not necessary to add a savings clause to the rules, as they are clear as to how court orders signed before and after the rules' effective date are treated. HCA will continue to follow these court orders as it does now.</p>
<p>The WAC should be amended based on actual costs, not an arbitrary number. HCA does not have guardianship expertise and to the extent experienced lawyers were consulted, their knowledge appears to have been ignored.</p> <p>The proposed rule sets attorney fees at \$1,200 every three years, reduced from the average \$2,000 amount. The WAC should be increased to an amount over \$2,000, with an annual cost of living increase.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>HCA and DSHS believe methodology mentioned above to determine the new triennial cost deduction of \$1,200 is sound. If there are truly exceptional cases where attorney fees are higher than allowed, the guardian may request an ETR.</p> <p>Likewise for the cost deduction. HCA and DSHS believe the data obtained is more reliable than anecdotal evidence. Exceptional cases can be reviewed under an ETR.</p>
<p>The rules fail to consider other legal services in a guardianship, such as success guardian petitions and final reports. The proposed rules do not allow for any legal expenses other than the three-year reports. The rules should be amended to reflect the actual costs of these significant legal services.</p>	<p>No changes were made to the rules as a result of these comments.</p> <p>Guardianship costs considered in these rules do not specify what costs are taken into account. Costs are everything from the guardian's legal services to office supplies. The cost deductions, along with the fee advance, are reasonable amounts relating to the client's individual needs.</p>

cc: HCA Rules Coordinator