



# 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 06, 2017

TIME: 11:47 AM

WSR 17-24-129

**Agency:** Department of Social and Health Services, Aging and Long-Term Support Administration

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 17-10-052 ; 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)

The department is proposing to create two new sections, WAC 388-79A-001 "Definitions" and WAC 388-79A-005 "Maximum amount of guardianship fees and related costs for a long-term care Medicaid eligible client", in a new chapter 388-79A WAC "Guardianship Fees For Medicaid Clients".

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
January 9, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2">https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2</a>

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

**Submit written comments to:**

Name: DSHS Rules Coordinator

Address: PO Box 45850  
Olympia, WA 98504

Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 pm January 9, 2018

**Assistance for persons with disabilities:**

Contact Jeff Kildahl, DSHS Rules Consultant

Phone: 360-664-6092

Fax: 360-664-6185

TTY: 711 Relay Service

Email: [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov)

Other:

By (date) December 26, 2017

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The department, in coordination with the Health Care Authority, is updating and establishing rules in chapter 388-79A WAC. As part of this review, the department and agency will consider fees allowed for establishing and maintaining guardianships for individuals who must participate in the cost of their health care under chapter 182-513 WAC and chapter 182-515 WAC and will revise rules in chapter 388-79A WAC to clarify the process in place prior to the adoption of the permanent rule that will be in chapter 182-513 WAC.

**Reasons supporting proposal:** See purpose statement above.

**Statutory authority for adoption:** RCW 74.08.090, RCW 43.20B.460, RCW 11.92.180

**Statute being implemented:** RCW 43.20B.460

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Name of proponent:** (person or organization) Department of Social and Health Services

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2271
Implementation:	Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2271
Enforcement:	Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2271

**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: Rules are exempt per RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

**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. \_\_\_\_\_

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:

<b>Date:</b> November 28, 2017	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

**Chapter 388-79A WAC  
GUARDIANSHIP FEES FOR MEDICAID CLIENTS**

NEW SECTION

**WAC 388-79A-001 Definitions.** The following definitions apply to this chapter:

(1) "Client" means a person who is eligible for and is receiving medicaid-funded long-term care.

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

(3) "Participate" or "participation" means the amount a client must pay each month toward the cost of long-term care services received each month. It is the amount remaining after the post-eligibility process under:

(a) WAC 182-513-1380 for a client residing in a medical institution, as defined under WAC 182-500-0050;

(b) WAC 182-515-1509 for a client receiving home and community services (HCS) waived services in an alternate living facility (ALF), as defined under WAC 182-513-1100, or in an at-home setting; or

(c) WAC 182-515-1514 for a client receiving developmental disability administration (DDA) waived services in an ALF, as defined under WAC 182-513-1100, or in an at-home setting.

(4) "Related costs" or "costs" means necessary costs paid by the guardian, including attorney fees.

NEW SECTION

**WAC 388-79A-005 Maximum amount of guardianship fees and related costs for a long-term care medicaid eligible client.** (1) As mandated by RCW 43.20B.460 and in accordance with RCW 11.92.180, the maximum amount of guardianship fees and related costs must not exceed the limits of this section when the person under guardianship is:

(a) A medicaid eligible client, residing in:

(i) A medical institution, as defined under WAC 182-500-0050;

(ii) An alternate living facility (ALF), as defined under WAC 182-513-1100; or

(iii) An at-home setting; and

(b) Required under chapter 182-513 WAC or chapter 182-515 WAC to participate towards the cost of long-term care.

(2) The maximum amount of guardianship fees and related costs must not exceed the limits of chapter 388-79A WAC when:

(a) The court order establishing guardianship was entered before (CR-103 effective date); and

(b) The client under guardianship was receiving medicaid-funded long-term care before (CR-103 effective date).

(3) For all other clients not described under subsection (2) of this section, the maximum amount of guardianship fees and related costs must not exceed the limits under WAC 182-513-1530.