



APPLE HEALTH (MEDICAID) MANUAL REVISION

Revision #	73
Chapter / Section	Long Term Services and Supports – Guardianship training Washington State Health Care Authority
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[Guardianship training | Washington State Health Care Authority](#)

Summary of Revision

[Updating amounts used for guardianship fees and related costs as well as Personal Needs Allowance.](#)

Brief summary of the revision.

[Revision are made to reflect the current Personal Needs Allowance for in home, medical institutions and residential clients receiving Long-Term Services and Supports \(LTSS\)](#)

Apple Health (Medicaid) Manual revision via track changes:

~~Attach PDF of the word document with track changes. This was requested by field staff so they are aware of what has changed in the manual.~~

Guardianship ~~training~~ Training

Revised Date:

~~April 18, 2022~~ June 14, 2022

Purpose: A training ~~packet~~ giving examples ~~to Public Benefits Specialist staff~~ of how guardianship fees and costs and attorney fees relating to guardianship orders ~~is are~~ allowed ~~in post eligibility for Institutional Medicaid (residing in medical institutions) clients residing in a medical institution or receiving Home and Community Based Services (HCBS) and Waiver institutional programs.~~

Note: The computations used for this training material reflect standards as of ~~9/1/2008~~ 7/1/2022.

~~Hit link~~ Link for current ~~Program standard for income and resources~~ **Error!**

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~~Hit link~~ Link for current ~~PNA and ADSA-AL TSA room and board~~ amounts

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Allowing Guardianship Fees & Costs/Attorney fees

WAC, ~~182-513-1530~~ **Error! Hyperlink reference not valid.** states ~~a client's monthly guardianship fee cannot exceed \$175~~ ~~235~~. In addition, the costs ~~(including attorney's fees,) for the establishment of the guardianship cannot exceed \$700~~ ~~1,850~~. The costs for review of the guardianship cannot exceed ~~\$600~~ ~~1,200~~ in any 3-year period. ~~the maximum allowed deductions for guardian fees, and associated costs.~~

~~WAC~~ **Error! Hyperlink reference not valid.** ~~outlines how the guardian is to notify us and under what conditions those fees and costs may exceed the \$175/\$700/\$600.~~

~~Even though we are notified correctly per WAC 388-79-040, orders are approved with fees and costs that exceed the amount in WAC.~~ We will allow ~~as long as~~ the guardianship fees and expenses ~~as long as those costs~~, plus the ~~Personal Needs Allowance (PNA), plus the earnings~~ the earnings deduction, and mandatory tax deduction does not exceed the ~~Medically Needy Income Level (MNIL)~~, if residing in an ~~medical~~ institution.

For HCBS ~~waivers~~, the combined PNA, earnings deduction, and guardianship fee ~~can't/cannot~~ exceed the [Special Income Level \(SIL\)](#).

Guardianship fees are an allowable ~~"post-eligibility"~~ deduction for [those in medical institutions and those on HCBS waiver services Institutional Medicaid programs](#)-only. (L ~~and K~~-track programs). ~~Post-eligibility is the part of the computation that determines how much the client must contribute toward the cost of "personal care". Another term for this is called "participation".~~

~~Guardianship fees is not an allowable deduction in Medicaid rule for noninstitutional medicaid.~~

Note: ~~What is a Medical Institution for the purposes of Medicaid?~~

Medical ~~institutions are~~institutions are defined in [WAC 182-500-0050](#) :

~~Nursing facilities~~

~~Hospice Care Centers~~

~~Hospitals~~

~~State Veterans Nursing Home~~

~~Rehabilitation Habilitation Centers (RHC)~~

~~Institutions for the mental retarded (IMR)~~

~~Institutions for the mentally diseased (IMD)~~

Clients in Medical Institutions ~~Nursing Homes~~

~~When it comes down to writing the award letter, please remember, for For nursing home participation, there is a limit to [the deductions how much you that](#)~~

can be allowed each month, in addition to the limits imposed by the Guardianship WACs. See WAC 182-513-1380

~~For nursing home cases there is a group of deductions that when totaled cannot exceed the medical needy income level or MNIL. Included in this group are guardianship fees & costs (which include attorney's fees and back fees).~~

For a client in a nursing home medical institution, when added together the following deductions cannot exceed the MNIL:

~~• **Total of these may not exceed the MNIL**~~

- ~~• PNA, plus~~
- ~~• Mandatory income tax, plus~~
- ~~• Wages of a recipient in an approved employment/rehab plan, plus~~
- ~~• Guardianship Fees and associated costs.~~

Here are some examples of how this will look:

Example #1 - Medical Institution

A single client has ~~\$4000-1500~~ in unearned income. No earned income. Client also has a deduction for mandatory income taxes from their pension of \$50 per month. In addition, this client has a guardian, and we have a court order approving the monthly fee ~~is of \$175-235~~ as well as ~~\$700-1,000~~ attorney's fees for the initial guardianship.

Month 1 – client enters nursing home facility on the 5th of the month from home. This is the first month of the guardianship court order.

Participation will look like this:

\$1500 Income

- ~~733-841~~ PNA (month of admit) CNIL as of 1/1/20152022

~~-104.90 Medicare Part B (If Month 1 of eligibility)~~

\$ ~~662-10659.00~~ Participation

But wait – what happened to the \$50 income tax, the guardianship fees, and the attorney's fees?

Well, we can't allow them this month. ~~The client will have to pay for those out of their PNA for this month.~~ Why? Because we cannot allow more than the PNA MNIL for all of those deductions combined, and the PNA for the initial month is the MNIL. There isn't any more of an allowance we can use.

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~~Okay, so now for month 2...~~

Example #2 - Medical Institution

~~month 2...~~Month 2...

The same client ~~and~~ is in the nursing home-facility the entire month.

Participation would be:

\$1500.00 Income

- ~~57.2875.36~~ PNA

- 50.00 Mandatory income tax

- ~~175.00~~235.00 ~~Month 2 guardianship fees~~Guardianship Fee – Month 1

- ~~175.00~~235.00 ~~Month 1 guardianship fees~~Guardianship Fee – Month 2

- ~~275.72~~245.64 Attorney's fees you can allow (\$~~424.28~~754.36 remaining)

-~~767~~659.00 Participation

Notice that the combined total of PNA + mandatory income-income Tax-tax + ~~both months~~the first two months of Guardianship Fees and allowed costs ~~are is~~ \$733841.00. The remaining attorney's fees will need to be allowed in future months. Always allow guardianship fees before allowing attorney's fees.

Example #3 - Medical Institution

Month 3...

The same client is in the nursing home-facility the entire month.

Participation would be:

\$1500.00 Income

- ~~57.2875.36~~ PNA

- 50.00 Mandatory income tax

- ~~175.00~~235.00 Guardianship Fee – ~~M~~month 3

- ~~424.28~~180.64 Attorney's fee you can allow (~~you've now allowed the entire \$700~~\$273.72 remaining)

\$ ~~793.44~~659.00 Participation

Example #4 -Medical Institution

Month 4...

The client is in the nursing home-facility the entire month.

Participation would be:

\$1500.00 Income

- ~~57.28~~75.36 PNA

- 50.00 Mandatory income tax

- ~~175.00~~235.00 Guardianship Fee - -Month 4

~~-273.72~~ Attorney's fee you can allow (You have now allowed the full \$1000 attorney's fees)

\$ ~~1217.72~~865.92 Participation

Note: Of course, for new nursing home-facility openings-clients with a Medicare premium as an allowable medical expense deduction, those expenses come after we allow for PNA, Mandatory Income Tax, Guardianship Fees & Attorney's fees.

Now, on to **COPES** (~~HCS-CN-BS~~ Waiver)

The COPES waiver was written and approved by CMS differently.

WAC 388-515-1509 states:

The total of the following amounts cannot exceed the ~~Medicaid~~ ~~medicaid~~ ~~Medicaid~~ SIL **Error! Hyperlink reference not valid.:** The SIL is 300% of the FBR **Federal Benefit Rate (FBR).**

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- Maintenance
- ~~personal needs allowances~~ PNA
- Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection
- Guardianship fees and administrative costs

The important thing to remember is we can reduce ~~COPEs~~ participation; ~~however, in most cases we cannot reduce not room and board (R&B).~~ If you need to reduce room and board ~~R&B~~, you must have an approved ETR (Exception to Rule) in place ~~before you can reduce the room and board portion of the payment.~~ This amount comes out of State funds.

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The ETR request must be forwarded to the HCS Regional designee when requesting a reduction of room and board ~~R&B~~ for ~~any reason~~ most reasons.

An approved ETR must be coded in ACES on the LTCX screen under the exception to rule ~~ETR~~ field in order to deduct from room and board ~~R&B~~.

What is room and board and what is an alternate living facility ~~(ALF)~~? How do we deduct guardianship fees if there is only room and board? ~~(ETR request)~~.

What is an ALF? The definitions for Room and Board and Alternate Living Facility (ALF) can be found under WAC 182-513-1100

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- ~~Licensed as a boarding home or adult family home by ADSA~~
- ~~There are different types of boarding homes, they are called~~
- Assisted Living Facilities
- Enhanced Adult Residential Centers (EARC)

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- ~~Adult Residential Centers (ARC)~~
- ~~DDA Group Homes~~
- ~~Licensed as a mental health adult residential treatment center (ARTF) by Dept. of Health.~~
- ~~An ALF is not a medical facility. DSHS approves MPC or DDA/HCS Waivers in ALFs.~~
- What makes an ALF so complicated?

- 2 parts

- Federal part of the computation is ~~called client "participation" or what the client pays toward their "personal care".~~ what the client pays towards their cost of personal care, otherwise known as participation.
- State funded part of the computation is called room and board (R&B). This is considered the shelter and food portion of the cost. Think of ~~room and board~~ R&B as the rent. It is the part that does NOT cover personal care.
 - ~~Room and board~~ The R&B amount is the FBR of \$733 minus the residential COPES PNA, of \$62.79 = \$670.21, as of 1/1/2015
 - When a deduction is ~~made out of~~ taken from room and board R&B, it is coming from state funds.
 - HCS requires an ETR process in order to deduct anything from room and board R&B because it is coming out of state funds. However, R&B deductions for guardianship fees and costs are allowed per rule effective June 1, 2018. Although an exception-to-rule (ETR) is no longer required to allow the deduction, Public Benefits Specialist (PBS) staff must code as a "Room and Board Exception" in ACES to allow the R&B deduction. The maximum deductions allowed for fees and costs are either the amounts in WAC 182-513-1530, or the court order, whichever is less. Any exceptions to these amounts are subject to the

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eligibility ETR WAC 182-503-0090. This is for any reason including guardianship orders.

~~So, think about the Personal Care as the part of the computation we can claim federal match, in other words NOT the room and board portion.~~

~~Note: As a side note, because an "ALF" is not considered a medical institution, we cannot allow any unpaid private pay fees (prior to Waiver eligibility) for an ALF as a medical deduction to reduce participation.~~

Example #1 — COPESHCBS Waiver

~~So, using the same client above~~Single individual receiving COPESHCBS waiver services at home: ~~-\$1500-2836~~ unearned income, \$50 mandatory income taxes, ~~\$175-235~~ guardianship fees with ~~\$700-1000~~ initial attorney's fees.

AT HOME:

~~\$1500-2836~~.00 Income

- ~~984.00~~2523.00 PNA (as of 4/1/2015/7/1/2022)

~~-175.00~~ Guardianship Fees

~~-344.00~~ Attorney's Fees — there is enough income to allow (if the clients income was lower, there may not be enough income to allow attorney fees)

\$ ~~0-~~313.00 Participation

Did you forget the Guardianship fees and \$50 mandatory income taxes?

No, WAC 182-515-1509 states that the total of PNA, earned income deduction, and guardianship fees can't exceed the Special Income Level (SIL). Because the PNA, in this case, is the SIL, guardianship fees are not allowed as a deduction. The Additionally, the waiver does not allow for a reduction for mandatory income taxes. A client who is on COPES-HCBS Waiver at home must use their PNA to cover this cost.

Note: Unlike nursing homes, however, Medicare and medical expenses are allowed after PNA but before guardianship fees and attorney's fees. So, if this client had medical expenses, we would be able to reduce the remaining participation by that amount.

Example #2 COPESHCBS Waiver

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If this were month 1 of eligibility, and the same client had Medicare allowable medical expenses, it would look ~~like this~~like this: at home:

\$~~1500~~2836.00 Income

- ~~981.00~~2523.00 PNA

- ~~404.90~~180.00 ~~Medicare~~Allowable medical expense

~~-175.00~~ Guardianship Fees (remainder is \$138 out of the \$175)

~~-239.10~~ Attorney's Fees (remainder is \$700)

\$ ~~-0133.00~~ Participation

Example #3 **COPESHCBS Waiver**

Same client in an ALF – admit month:

\$~~1500~~2836.00 Income

- ~~733841.00~~ PNA/Room & Board (~~\$62.79~~75.36 + ~~\$670.21~~765.64)

- ~~404.90~~180.00 ~~Medicare Part B (Month 1 or 2 of Eligibility)~~Allowable Medical Deduction

- ~~175.00~~235.00 Guardianship Fees

- ~~487.10~~530.64 Attorney's Fees (Remainder is ~~\$212.90~~469.36 to be allowed in the next month)

\$ ~~-01,049.36~~ **COPES** Participation

+ ~~670.21~~765.64 Room & Board

\$ ~~670.21~~1815.00 Client's Cost of Care

Just like at home, Medicare and medical expenses are allowed after PNA but before guardianship fees and attorney's fees. They are allowed out of **COPES** participation, not out of room and board. If you must reduce room and board R&B, then you must have an approved ETR to do so. Room and board R&B is consists of state funds and is considered the portion for shelter and food.

~~But what about that income tax? We're not expecting a client with PNA of \$62.79 to use that to cover the income taxes, are we?~~

~~Well, unfortunately, the COPES waiver covers both in-home and ALF. If it doesn't allow for it at home, it doesn't allow for it in the ALF. You cannot use an ETR to reduce the COPES portion of the payment because this goes against the state plan. Your only option is to request an ETR to reduce the room and board payment to allow for the mandatory income taxes.~~

What about Guardianship fees for non--institutional Medicaid programs?

- A court ordered guardianship fee is not an allowable deduction in non-institutional Medicaid.
- Guardianship fees are only allowed in institutional programs with the limitations indicated above.
- For individuals on [Medicaid Personal Care \(MPC\)](#) residing in an ALF, an ETR referral can be made to the HCS Regional designee. Before considering an ETR, consult the social worker about the possibility of services through the [COPES-HCBS](#) Waiver if the client would have available participation that we could apply the guardianship fee deduction.
- [COPES-HCBS](#) Waiver cannot be used for Adult Residential Centers (ARC),-but can be used for Adult Family Homes (AFH).

Example #1 MPC client ~~on G03 program~~ residing in an adult family home.

Gross income is \$~~1500-2436~~ SSA.

Court order for \$~~175-235~~ guardianship fee received.

Rather than doing an ETR to consider a deduction from the ~~G03 room and board R&B~~, this case should be switched to the [COPES-HCBS](#) Waiver if the client meets the functional criteria.

The \$~~175.00~~[235.00](#) would be an allowable deduction from the [COPES-HCBS](#) Waiver.

HCS Social Services determines the client cost of care for MPC, but in this circumstance a discussion with the financial worker and social worker should occur about the possibility of COPES-HCBS Waiver services.

The COPES-HCBS Waiver is considered the priority program over MPC for:

- Clients meeting functional criteria for COPES-HCBS waiver and
- Have income over the CNIL and
- Reside in an adult family home.

Example #2 MPC client ~~on G03 program~~ residing in an ARC.

Gross income is \$~~1500-2436~~ SSA

Court order for \$~~175-235~~ guardianship fee received.

HCBS Waiver services are not authorized in an ARC setting, only MPC. An ETR to consider a deduction from room and board should be considered by the HCS Social Worker.

~~The COPES Waiver is considered the priority program over MPC for:~~

~~Clients meeting functional criteria for COPES and
Have income over the CNIL and
Reside in an adult family home~~

Example #3 MPC client on S02 living at home.

Guardianship fees are not an allowable deduction for non-~~i~~institutional ~~medicaid~~Medicaid programs. An MPC client at home does not participate in the cost of personal care nor is there ~~room and board~~R&B. In this example, there is no deduction for the guardianship fee.