FIDUCIARY COMPENSATION SCHEDULE

GUARDIAN FOR INCAPACITATED ADULT

Virginia Code § 64.2-1208 allows any guardian appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) or Chapter 21 (§ 64.2-2100 et seq.) reasonable compensation for his services rendered to the incapacitated adult. There is no specific definition of “reasonable compensation”; however, the commissioner, in the absence of unusual circumstances, will allow the conservator to pay a fee based upon the following:

1. A conservator may pay the reasonable cost of independent third-party services for the care of the ward and management of that care without the limitations imposed herein. Where the guardian providing services for the care of the ward is a family member of the ward or affiliated with the conservator, the conservator shall limit payment as provided herein. An attorney, accountant or other professional who qualifies as a guardian shall not be considered an independent third party provider without the approval of the commissioner. Conservators shall report payments of guardian compensation to the Internal Revenue Service as nonemployee compensation.

2. A conservator may pay compensation to guardians other than independent third party providers in each accounting period, based on the hours worked providing guardian services during such period, subject to the limitations set forth herein.
   a) Compensation for activities of daily living shall be at a rate up to $25.00 per hour.
   b) Compensation for management services shall be at a rate up to $125 per hour.
   c) If guardian compensation exceeds the income receipts of conservatorship less any other disbursements during the accounting period the commissioner may condition further payments upon his prior approval.
   d) Guardian compensation for management services may not exceed payment for 10 hours each month during the account period without prior approval of the commissioner.
   e) Guardian compensation for activities of daily living may not exceed payment for 40 hours each month during the account period without prior approval of the commissioner.
   f) It shall be a condition of such hourly payment that the guardian submit detailed time records for such services to the conservator, which records shall be submitted with the account showing such payments. Services related to

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activities of daily living and management services shall be reported separately. The commissioner must approve in advance any payment for services rendered during prior accounting periods.

3. The commissioner may condition the conservator making continued payment to the guardian in the next accounting period upon submission with the conservatorship account of a satisfactory report from an independent care manager that the commissioner approves setting forth the adequacy of the care and treatment of the ward. If the commissioner requires such report, failure to submit a satisfactory report shall terminate any right of the guardian to compensation after the closing date of the account absent approval of the commissioner.

4. Activities of daily living are defined as "the things we normally do...such as feeding ourselves, bathing, dressing, grooming, work, homemaking, and leisure." Basic activities of daily living consist of self-care tasks, including dressing, eating, ambulating, toileting, and hygiene. The term also includes instrumental activities of daily living, not necessary for fundamental functioning, but that allow an individual to live independently in a community, including shopping, housekeeping, accounting, food preparation and administration of medications, telephone and transportation activities.

5. Management is a service that links and coordinates assistance from both paid service providers and unpaid help from family and friends to enable wards with functional limitations to obtain the highest level of independence consistent with their capacity and preferences for care are intended to improve the ward’s quality of life and reduce family stress through:
   - Assessment and monitoring, such as conducting an assessment to identify needs, problems and eligibility for assistance, and monitoring care whether at home or in a nursing home or assisted living
   - Planning and problem-solving, such as developing a care plan, providing assistance with placement, and assisting the family in positive decision making
   - Education and advocacy, including advocacy for the ward with institutions and caregivers,
   - Caregiver direction, such as monitoring medications and coordinating medical appointments

6. Fees for guardian services in excess of the guidelines set out herein may not be paid until the commissioner approves such fees. In determining whether such excess fees shall be reasonable, the commissioner shall consider: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of the guardianship payments on the estate’s financial ability to meet the incapacitated person's foreseeable health, medical care, and maintenance needs; and (iv) other
factors that the commissioner may deem relevant. The commissioner shall respond promptly to requests for such approval.

7. The conservator may reimburse the guardian for actual expenses of the ward, supported by proper vouchers. In the event that the guardian is providing the ward room and board, the conservator should request that the commissioner determine an appropriate allowance to be paid to the guardian for such expense, which need not be supported by vouchers.

8. Special Rules
   a) If the proposed order appointing a guardian directs payment of compensation different from the guideline compensation set out in this fee schedule, the guardian ad litem shall so advise the court and shall make an express recommendation whether the proposed compensation is reasonable in light of the circumstances of the ward.
   b) If the court order clearly sets out compensation at a specific hourly rate that the guardian is to receive, the hourly rate shall be presumed to be reasonable, as that term is used in Virginia Code § 64.2-1208; provided that the commissioner has the responsibility to determine whether the services are necessary and whether the amount of fiduciary compensation is reasonable. Factors to be considered in determining the compensation include the nature of the assets, the character of the work, the difficulties encountered, the time and expertise required, the responsibilities assumed, the risks incurred and the results obtained.
   c) If the court order states that the guardian shall receive for services the compensation set out in a referenced published fee schedule in effect at the time such services are rendered, fees as set out in the fee schedule shall be presumed to be reasonable, as that term is used in Virginia Code § 64.2-1208. An objecting party has the burden of persuading the commissioner that fiduciary compensation taken according to such a fee schedule is not reasonable. The commissioner has the responsibility to determine whether the services are necessary and whether the amount of fiduciary compensation is reasonable.
   d) If the court order is silent as to the guardian’s compensation, the guidelines set out herein apply.
   e) If there are co-guardians, generally, the fee will be divided equally among them. The co-guardians may agree among themselves on a different division. If there is a dispute concerning the division of the fee, the commissioner may hold a hearing to resolve the dispute.
   f) If there are successor guardians, the compensation shall be paid based upon the actual hours each guardian worked.
g) If the conservator has any questions about the compensation allowable to the guardian after examining these guidelines, the conservator should consult with the commissioner before paying any guardian fee.

h) Nothing in these guidelines is intended to alter any statute concerning fiduciary compensation.

John H. Rust, Jr.
Commissioner of Accounts

Joseph A. Barsanti
Deputy Commissioner of Accounts

Approved by the Circuit Court of Fairfax County May 7, 2013