910 KAR 2:030. Accounting provisions for adult guardianship.

RELATES TO: KRS 210.290(3), (4), (5), 387.500-387.990, 42 C.F.R. 483.10, 42 U.S.C. 1320b-20

STATUTORY AUTHORITY: KRS 387.600(1), 387.760, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 387.760 authorizes reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of guardianship or conservatorship duties and powers from the financial resources of the ward. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes accounting provisions for adult guardianship.

Section 1. Definitions.

(1) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(2) "Budget" means a financial spending plan that estimates revenues and expenditures of an individual for a stated period of time by examining and analyzing available financial information.

(3) "Division" means the Division of Operations and Support.

(4) "Emergency" means unexpected expenses such as:

(a) Medical needs not paid by Medicare or Medicaid;

(b) Home repair; or

(c) Transportation for a medical appointment.

(5) "Fiduciary Management Branch" means a central office branch under the Division of Operations and Support.

(6) "Field Services Branch" means a central office branch under the Division of Guardianship.

(7) "Order of appointment" means a type of guardianship appointment pursuant to KRS 387.590(6).

(8) "Ordinary and necessary expenses" means those expenses that are requested by a field services worker to maintain a ward's quality of life such as clothing, snacks, and non-medical transportation.

(9) "Personal needs" means an individual's need to purchase varied goods such as:

(a) Clothing;

(b) Personal care items; or

(c) Social support items such as:

1. A telephone;
2. Stationery;
3. Books;
4. Snacks; or
5. Occasional outings.

(10) "Personal spending accounts" means money maintained by the facility for the client's personal use in accordance with 42 C.F.R. 483.10.

(11) "Provider" means a facility or entity providing services for a ward such as:

(a) Self;

(b) Caretaker;

(c) Family;

(d) Group home placement;
(e) Hospital; or
(f) Psychiatric hospital.
(12) "Ward" is defined by KRS 387.510(15).
(13) "Work allowance" means a portion of a ward's wage check sent to the ward to use for personal spending.

Section 2. Budget.
(1) The Field Services Branch shall complete a budget upon receipt of the ward's funds or when the ward moves to a facility without an established rate.
(2) The Fiduciary Management Branch shall revise the budget once the guardianship compensation has been determined, pursuant to KRS 387.760.
(3) The budget shall include:
(a) The ward's monthly income and expenses;
(b) Other expenses of the ward, including any applicable guardianship compensation that are on a monthly basis, to calculate a monthly amount;
(c) The ward's net amount; and
(d) Submission of the completed budget to the Fiduciary Management Branch for review and processing.

Section 3. Bed Holds.
(1) The facility, provider agency, or the Division of Guardianship shall notify the Fiduciary Management Branch, within twenty-four (24) hours, or if on a weekend or holiday by noon on the next business day, that a ward is leaving or has left the facility or placement.
(2) The Fiduciary Management Branch may:
(a) Give verbal authorization for the bed to be reserved, including the number of days; and
(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified.
(3) If authorizing a bed hold, the Fiduciary Management Branch shall:
(a) Verify the verbal authorization of a bed hold; and
(b) Provide written notification of the number of days approved to the facility within twenty-four (24) hours of determination.
(4) If a ward is in a public assistance eligible placement and moves to a temporary stay at a hospital, or a state or privately run psychiatric hospital, the ward may be entitled to retain the public assistance for ninety (90) days in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212. Eligible placements include a:
(a) Licensed personal care home;
(b) Licensed family care home;
(c) Caretaker; or
(d) A private residence in accordance with Section 4(2)(d) of 921 KAR 2:015 supported by the community integration supplementation.
(5) In order to continue public assistance, the following requirements shall be met:
(a) A bed hold has been approved;
(b) A physician has certified in writing within ten (10) calendar days of admission that the recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and
(c) The Fiduciary Management Branch provides the Department for Community Based Services with the following:
1. Notification of the temporary admission; and
2. The physician statement as specified in paragraph (b) of this subsection.

(6) If the bed hold is not approved or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Management Branch to the Kentucky State Treasury from the date of admission.

(7)

(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Management Branch.

(b) If funds are verified by the Fiduciary Management Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (3) of this section.

Section 4. Work Allowances. The Field Services Branch shall complete a budget for a ward based on individual needs, taking into account Social Security Administration work incentive rules, 42 U.S.C. 1320b-20.

Section 5. Quarterly Reports and Personal Spending Accounts.

(1)

(a) Providers shall submit a quarterly report to the cabinet, which includes documentation of a ward's personal needs income and expenses.

(b) The maximum allowable balance to be held in a personal spending account shall be $100 on the last day of a calendar month.

(2) The division shall review the ward's account for a discrepancy and to ensure:

(a) The accounting report includes all personal needs income received on behalf of the ward;

(b) Receipts are attached to the accounting report including special requests that may have been initiated by the provider such as:

1. Clothing;
2. Furniture; and
3. Electronics;

(c) All personal needs expenditures incurred for that ward are ordinary and necessary; and

(d) The balance does not exceed $100.

(3) If no discrepancies are found, the Fiduciary Management Branch shall ensure the balance is in compliance and that appropriate backup receipts are attached to the accounting report.

(4) If a discrepancy is found, the Fiduciary Management Branch shall contact the provider to resolve the issue.

(5) Upon completion, the Field Services Branch shall provide the review to the Fiduciary Management Branch for final review and processing.

(6) The Fiduciary Management Branch with input from the Field Services Branch, may:

(a) Request a refund;

(b) Modify the amount;

(c) Suspend the disbursement of funds; or

(d) Resume the disbursement of personal needs funds for the ward.

Section 6. Negotiable Checks.

(1) The Field Services Branch shall promptly forward all checks and money orders received on behalf of a ward to the Fiduciary Management Branch.

(2) Any cash received on behalf of a ward shall be converted to a money order or cashier's check as allowable by the banking institution, and forwarded to the Fiduciary Management Branch as specified in subsection (1) of this section.

(3) Each field services office shall have and maintain a tracking system for cash and checks received on behalf of a ward.

Section 7. Personal Checking Accounts of a Ward.

(1) Establishment of a checking account for a ward shall be at the direction of the court.

(2) The Field Services Branch shall ensure that the facility where the ward resides is aware that:

(a) An individual savings or checking account shall not be established for the ward unless the account is listed in the provider's name for the benefit of the ward; and

(b) The ward shall not legally write or endorse checks from this account unless directed by the court.

Section 8. Checks Sent to a Ward as Payee.

(1) The Field Services Branch shall ensure that a ward of the cabinet does not receive or endorse checks made payable directly to the ward unless:

(a) The court has directed that the ward may receive and endorse checks; or

(b) The order of appointment is for a limited type of appointment that does not specify that the ward cannot execute instruments or enter into a contractual relationship.

(2) Unless the ward can endorse a check through an AOC-775, Order of Appointment of Guardianship that is issued by the Administrative Office of the Courts and available at www.courts.ky.gov, the division shall ensure that no payment requests with the ward as payee is made.

Section 9. Requests for Payments and Supporting Documentation. A ward's expenses shall be paid through a payment request system that has been developed by the Fiduciary Management Branch to meet accounting internal control best practice and reporting required by the courts.

Section 10. Medical Payments and Medical Spend Downs, Pharmacy and Health Insurance Premium Payments.

(1) The Fiduciary Management Branch shall review for payment a ward's expenses such as medical, medical spend down, pharmacy and health insurance premium payments.

(2) The Fiduciary Management Branch shall arrange payments when the ward has financial means to pay medical expenses not reimbursable or covered by insurance, such as:

(a) Glasses;

(b) Diabetic shoes; or

(c) Dental services.

Section 11. Provider Payments. The Fiduciary Management Branch shall:

(1) Review a provider statement received; and

(2) Ensure that the provider statement does not include inappropriate expenses such as medical, medical co-payments, pharmacy charges, or personal needs.

Section 12. General Expenses.

(1)

(a) Extra personal needs shall be personal needs that exceed the budgeted or regulatory personal needs such as for personal care in accordance with 921 KAR 2:015.

(b) The Field Services Branch may request the extra personal needs specified in paragraph (a) of this subsection at any time.

(c) The Field Services Branch shall follow the procedures for requests for payment and supporting documentation in accordance with Section 9 of this administrative regulation.

(2) The Fiduciary Management Branch shall review and approve any payment request.

(3) The Fiduciary Management Branch shall approve or disapprove a payment request based on if:

(a) Funding is available; and

(b) The request indicates that the expense is supported through documentation, if required, including:

1. Utility bills; or

2. House hold items.

Section 13. Burial Policies and Related Issues.

(1) If funds are available beyond providing for the ward's needs, a preneed burial may be arranged for the ward.

(2) Prior to purchasing a burial policy or making any other funeral arrangements, the Field Services Branch shall:

(a) Request a burial policy by contacting the Benefits Management Branch;

(b) Take into consideration a ward's desires and cultural and religious views, if known; and

(c) Review a ward's records to:

1. Assess what burial policies or arrangements have previously been acquired; and

2. Ensure the same funeral home is listed on all policies.

(3) The Field Services Branch may discuss with the ward, relative, or other individual with knowledge of the ward's wishes concerning burial arrangements.

(4) If the Field Services Branch is unable to obtain information regarding a burial preference from the ward, relative, or other individual with knowledge of the ward's wishes, the Field Services Branch shall:

(a) Examine the ward's record for information pertaining to burial;

(b) Decide the location for the burial and the funeral director who will handle the arrangements; and

(c) Submit burial request information to the Benefits Management Branch for determining purchase of a burial policy.

(Recodified from 912 KAR 6:030, 12-15-2008; 35 Ky.R. 1976; 2117; 2288; eff. 5-1-2009; 44 Ky.R. 2698; 45 Ky.R. 371, 662; eff. 9-19-2018; Recodified as 922 KAR 005:160, 7-23-2024.)