

# ***SafetyNetWorks***

*Information for Elder Adults-at-Risk and Adults-at-Risk Agencies  
AAR Information Memo #15, April 2012*

## ***IN THIS ISSUE***

Guidance to County Adult Protective Services (APS)/Elder Adults/Adults-at-Risk (EA/AAR) agencies when establishing fee schedules for APS services.

## ***SUMMARY***

Counties can charge wards/individuals for legal expenses (e.g., attorney fees and costs) incurred related to guardianship and protective services or protective placement proceedings. However, counties cannot charge wards/individuals for the cost of court-ordered additional medical, psychological, social, vocational, or educational evaluation in guardianship proceedings or court-ordered comprehensive evaluations in protective services or protective placement proceedings. In addition, counties are not permitted to charge wards/individuals for other adult protective services, such as investigations or referral services, unless a court order allowing such charges is obtained.

## ***BACKGROUND***

In September 2011, a discussion occurred over the WisAPS Listserv in response to a posting by a county, which stated it was considering charging fees for APS services and asked if any county currently charges for such services (e.g., petitioning for guardianship and/or protective placement and writing court ordered comprehensive evaluations). In response to the query, several counties replied with a variety of answers. To ensure that this issue was accurately addressed, Bureau of Aging and Disability Resources staff consulted with the Department of Health Services' Office of Legal Counsel. The Department's position on the issues under discussion follows.

## ***LEGAL EXPENSES IN GUARDIANSHIP AND PROTECTIVE SERVICES OR PROTECTIVE PLACEMENT PROCEEDINGS***

The county can file for guardianship under Wis. Stat. § 54.34 (1). The county can also file for guardianship and for protective services or protective placement of an individual under Wis. Stat. § 55.075 (1).

Courts may order that certain fees and costs of proceedings for guardianship or protective services or protective placement be paid from the ward or individual's funds, where appropriate. Pursuant to Wis. Stat. § 54.46 (3) (a), if a guardian is appointed, the court shall award, from the assets of the ward, payment of the petitioner's reasonable attorney fees and costs, unless the court finds that it would be inequitable to do so after considering the five factors specified in the statute. Likewise, Wis. Stat. § 55.075 (4) (a) gives the court the authority to award payment of the petitioner's attorney fees and costs from the assets of the individual in protective services or protective placement proceedings unless it would be inequitable to do so based on the five factors specified in the statute.

Wis. Stat. §54.46 (3) (a) and Wis. Stat. § 55.075 (4) (a) allow the court to award compensation to the petitioner from the ward or individual's estate for legal expenses related to guardianship and protective services or protective placement. If the county is the petitioner, it can seek such an award from the court.

### ***GUARDIANSHIP EXAMINATIONS/REPORTS AND ADDITIONAL EVALUATIONS***

When a guardianship is sought, the petitioner must have the proposed ward examined by a physician or psychologist and provide a written report to the court in accordance with Wis. Stat. §54.36 (1). The cost of the examination and/or report is paid by the petitioner, but the petitioner could bill the ward for that cost if ordered by the court.

Wis. Stat. § 54.10 (3) (d) requires in guardianship proceedings that the court decide if additional medical, psychological, social, vocational, or educational evaluation is necessary for the court to make an informed decision regarding the proposed ward's capacity. If such additional evaluation is found by the court to be necessary, the court may obtain assistance from the county in the manner provided in Wis. Stat. § 55.11 (1). This additional evaluation, unlike the examination and report required from the petitioner under Wis. Stat. § 54.36 (1), is considered a service "to the court," the cost of which is not billable to the ward by the county under Wis. Stat. § 46.03(18) (a).

### ***PROTECTIVE SERVICES/PROTECTIVE PLACEMENT COMPREHENSIVE EVALUATION***

Where protective services or protective placement is sought, the court must order the county to conduct a comprehensive evaluation of the individual pursuant to Wis. Stat. § 55.11 (1). The court-ordered comprehensive evaluation required in proceedings seeking protective services or protective placement is considered a service "to the court." Therefore, the cost of such services is not billable to the individual by the county under Wis. Stat. § 46.03 (18) (a). Individuals have the right to obtain an independent comprehensive evaluation at his or her own expense unless the individual is indigent, in which case the county must pay for it.

### ***INVESTIGATIONS, REFERRAL SERVICES, OR OTHER PROTECTIVE SERVICES***

Counties are not permitted to charge wards/individuals for other adult protective services, such as investigations or referral services. Wis. Stat. § 46.03 (18) authorizes a county to collect a uniform fee for providing services related to certain programs specified in the statute. County fees for adult protective services provided under Wis. Stat. § 55.043 are not authorized under Wis. Stat. § 46.03 (18) nor does Wis. Stat. § 55.043 authorize a county to charge for those services. Wis. Stat. § 55.045 states that counties are responsible for the reasonable program needs of individuals who are protectively placed or who receive protective services, including the reasonable expenses for the Section 55.11 evaluations discussed above. Wis. Stat. § 55.045 further provides that the Department may require individuals to pay for services or care and custody received based on the individual's ability to pay for such costs. However, the Department has not promulgated an administrative rule that provides for this type of chargeback by the county. If the county wants to charge an individual for these costs, the county should ask the court to include such language in its order.

## ***CONTACT INFORMATION***

If you have questions about the information presented here, please contact the individual listed below.

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