

Clarity on Professional Guardian Compensation

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After the confusion spurred by Section 950 of the Michigan Budget Act of 2022 (“Section 950”), the Michigan Attorney General’s Office and the Oakland County Probate Court have recently provided more clarity on compensation for professional guardians. Section 950 appeared to cap professional guardian compensation at \$83/month, stating: “a court-appointed public guardian shall not be compensated more than \$83.00 per month for any CMHSP-eligible recipient regardless of funding source.” Michigan Public Act No. 166, of 2022, Section 950. This apparent cap had led many across the state to believe that a public guardian’s compensation was now limited to \$83/month in total, crippling the financial feasibility of a career as a professional guardian.

Recently, the Michigan Attorney General’s Office weighed in (while not providing an official Attorney General Opinion, which may only be provided subject to a specific process and request made by certain officials) through a written response to a Petition before the Oakland County Probate Court. The Attorney General’s response clarified that it will not intervene in any cases to enforce a cap of \$83/month on guardianship compensation. The response also referenced the Michigan Department of Health and Human Service’s (“MDHHS”) opinion that MDHHS has no jurisdiction to monitor third-party payments to guardians and that it also has no intention to enforce the \$83 monthly cap on guardianship compensation.

Helping to resolve the issue, the Oakland County Probate Court later issued an Order clarifying that Section 950 of the Michigan Budget Act does not in any way limit the compensation of professional guardians and that the Michigan Estates and Protected Individuals Code (“EPIC”) controls. EPIC provides that a professional guardian may be compensated, without limitation, from “a source other than the estate of the ward, developmentally disabled individual, incapacitated individual, or protected individual.” MCL 700.5106(4).

With the clarification from the Oakland County Probate Court and the Attorney General’s Office, professional guardians may be safely compensated above and beyond the apparent \$83 cap outlined by Section 950. However, it’s important to note that EPIC mandates additional reporting for third-party payments to professional guardians, which involves its own set of requirements.

As a note of caution, the expressed view of the Attorney General's Office and MDHHS are not binding and may be subject to change. The final language related to guardianship compensation in the 2023 Michigan legislative budget could be an important marker of whether Section 950 was a drafting error not meant to limit compensation for professional guardians, or whether the legislature does intend to place a cap professional guardian compensation moving forward.

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