

THE BIG \$35 QUESTION: HOW MUCH IS COURT APPOINTED GUARDIANSHIP REALLY WORTH?

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I. INTRODUCTION

A. Potential for Abuses

Despite the growing need for guardianships evidenced by the societal issues in the next section, an emerging awareness of the pitfalls of poor guardianship has developed in recent years.

The 2021 social media frenzy concerning the high-profile guardianship and conservatorship cases involving Britney Spears, artist Peter Max, and “America’s Top 40” host Casey Kasem and movies such as *I Care a Lot*, helped to significantly bolster public awareness and discussion about outdated practices in the guardianship system. They’ve also drawn attention to a dangerously burdened system that can put the lives in the hands of others with little or no evidence of necessity and then fails to guard against abuse, theft, and neglect.¹

In spite of greater attention being called to issues surrounding guardianship, a recent topic of discussion has been how little guardianship data there is,² considering there are approximately 1.3 million guardianship or conservatorship cases open in the U.S. at any given time.³ There is a lack of centralized data at both the national and state level. This makes it difficult to discern information about those under guardianship as well as the status of many guardianships considering most states do not have a registry or database.⁴ While there is little

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1. Elizabeth Moran, *2021 Guardianship Legislation: Highlights and Trends Effectuating Improved Processes and Outcomes in U.S. Guardianship Systems*, A.B.A. (Mar. 14, 2022), https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-43/bifocal-forty-three-four/2021-guardianship-trends/ [https://perma.cc/GQ8H-BY2Q]; see also LAWRENCE A. FROLIK & ALISON BARNES, *ELDER LAW: CASES AND MATERIALS* 404 (6th ed. 2015) (“Unless the court oversees the guardian’s activities, there is opportunity for poor decision making, financial abuse, theft, self-dealing, making inappropriate gifts and a general failure to carry out the responsibilities of a guardian.”).

2. See In re Ord. Establishing the Ind. Guardianship Oversight Task Force, No. 24S-MS-00399, 2024 Ind. LEXIS 704, at *2 (Ind. 2024) (“In recent years, it has become clear that further research on issues surrounding guardianship can help Indiana create a more effective system of oversight and supervision by aligning resources and designing a system that is easy to navigate and ensures justice is fairly administered.”).

3. Moran, *supra* note 1.

4. Kristin Hamre & Derek Nord, *Guardianship: Synthesizing the Data*, IND. INST. DISABILITY AND CMTY. 1 (2023), <https://iidec.indiana.edu/doc/resources/IIDC-Issue-Briefs/IIDC-Issue-Brief->

statistical data, poor guardianship practices have been the subject of investigative journalism. Specifically noted in a Bloomberg Law series, there is no national standard to limit the number of cases that guardians can take on at a time, which places a lot of pressure on the limited programs that are able to provide this service.⁵ For example, Debra Woods is a solo practitioner in Greenwood, Indiana, who maintains a caseload of over 200 guardianships at a time and claims “she must maintain that caseload to earn a good living.”⁶ This practice does not violate any rules or laws in Indiana related to guardian responsibilities.⁷ Not only is this a failure in oversight⁸ and legal standards to ensure proper care, it is also a failure of incentive. With proper oversight, beyond that currently imposed by court systems across the United States, increasing the Medicaid reimbursement for guardianship fees will incentivize maintaining a reasonable caseload while disincentivizing fraud and/or abuse.

The reason that guardians or guardianship programs have such a high caseload, aside from the overwhelming demand, is that a portion of their income is derived from the \$35 per month per person Medicaid allowance that caps their fees.⁹ Debra Woods notes that if there were a higher guardianship fee, she would simply hire individuals to assist her in providing guardian services.¹⁰ But until then, the current fee structure under Medicaid necessitates her caseload of 200-plus guardianships.¹¹ Woods is not alone. Legal experts have identified caseloads that high in California, Florida, and Michigan as well.¹² One wonders how guardianships can effectively be maintained when the court-appointed guardian has only so much time. It borders on malpractice and does a disservice to guardianships across the country. Legal experts and practitioners surveyed have opined that the proper number of guardianships that any one guardian can effectively maintain at a time is somewhere between 10 and 30—nowhere near 200.¹³ A guardian could make a decent living at the low rate of \$35 per month

on-Guardianship-2.pdf [https://perma.cc/QLC6-CAVJ]; *Beyond Guardianship: Toward Alternatives that Promote Greater Self-Determination*, NAT’L COUNCIL ON DISABILITY 65 (Mar. 22, 2018), <https://www.ncd.gov/assets/uploads/docs/ncd-guardianship-report-accessible.pdf> [https://perma.cc/E5TD-HVXS]. (“Many courts and states do not know the number of adults under guardianship in their jurisdiction, let alone the demographics.”).

5. See Ronnie Greene, *420 Cases, One Guardian: System Runs Amok on Just \$35 a Month*, BL (Mar. 8, 2023), <https://news.bloomberglaw.com/us-law-week/420-cases-one-guardian-system-runs-amok-on-just-35-a-month> [https://perma.cc/XAF5-V2HW].

6. *Id.* (also noting that Woods has taken on over 420 guardianship clients since 2016); *About Us: What We Do*, CARE FIRST INC., <https://www.carefirstincbrownsburg.com/about> [https://perma.cc/Y9U6-64RS] (last visited Nov. 20, 2025).

7. Greene, *supra* note 5.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

per guardianship,¹⁴ but that only encourages one to take on too much and lower the value of their services. Moreover, some of the care facilities that the incapacitated individuals reside in may be all over the state that a guardian practices in, making it significantly more difficult for a guardian to engage in oversight and caretaking abilities because of travel and time constraints.¹⁵

In fact, a case handled by Debra Woods has received judicial scrutiny by at least one judge, who was “disturbed” with Woods’ inattention to one guardianship in particular and “blew a fuse” at her negligence in taking a protected person¹⁶ to cancer treatment during the COVID-19 pandemic.¹⁷ “As Woods’ caseload grew, court records show, items sometimes did slip through the cracks. Woods failed to file a required status report in one case and faced a possible contempt citation. The judge in another case said a client’s final accounting was unacceptable. In a third case, Woods hadn’t notified all kin that their relative was under guardianship.”¹⁸ This kind of inattentiveness is inevitable with such a high caseload. One family member of a protected person frustratedly called Woods’ guardianship a “sham” and noted that Debra Woods did not invest much time in her mother’s care, only visiting once every six months.¹⁹

It is no secret that many nonprofits struggle with fundraising and producing revenue. Woods’ case provides a clear example of how a nonprofit guardianship organization can struggle to produce enough income when the fees for their services are so low. Without those fees, it puts more pressure on fundraising. And when these organizations do attempt to get their name out and obtain funding, it generally costs money, which takes away from their resources that could be used to pay staff and acquire talent in an extremely burdened field that is desperate for help. Debra Woods conceded that she would hire staff if she had the resources. Unless parties begin making substantial gifts to organizations/guardians who are similarly situated, the law must change or they will be forced to cut costs and overburden themselves to keep their heads above water. Nonprofits like guardianship organizations provide a public good²⁰ that aids in the care of the growing population of the United States that is deemed incapacitated due to mental illness, mental infirmity due to age, or inability to

14. *Id.* (noting that at the current rate, a guardian with “215 active cases at \$35 per month would earn \$90,300 a year”).

15. *Id.*

16. Throughout this Note, the terms “client” and “protected person(s)” are used interchangeably in reference to individuals under guardianship. Some jurisdictions also use the terms “ward” or “conservatee.” See FROLIK & BARNES, *supra* note 1, at 353.

17. Greene, *supra* note 5.

18. *Id.*

19. Binghui Huang, ‘It’s a Sham’: Spouses, Families Raise Alarm on Adult Protection Laws, INDYSTAR (Mar. 21, 2024), <https://www.indystar.com/story/news/local/2024/03/21/guardianship-systems-flaws-raise-concerns-among-families-advocates/72399037007/> [<https://perma.cc/U6TD-BZV2>].

20. JAMES J. FISHMAN ET AL., NONPROFIT ORGANIZATIONS: CASES AND MATERIALS 33 (6th ed. 2021).

care for oneself for myriad other reasons. However, this does not mean that the law should not seek to redress the vast discrepancy between guardianship fees currently in the State of Indiana and reasonable compensation for these services.

The Center for At-Risk Elders (CARE), at least in 2017, had approximately 140 indigent, incapacitated individuals residing in Central Indiana under their guardianship.²¹ With a larger staff, care and the tasks associated with guardianship overall do not fall through the cracks. While a larger staff is better-equipped to handle a higher case load of guardianships than a one-man-band like Debra Woods, Volunteer Advocates for Seniors and Incapacitated Adults (VASIA) programs will likely always have a need for more staff because the work is complex and is still difficult even with a full staff. Larger programs—those with greater recognition and funding—are better equipped than a solo guardianship or organization of small size to handle high caseloads. This is common sense. When an organization is stretched thin and does not have the resources necessary for a large clientele, there is a degree of inattention. The client suffers as a result of insufficient oversight, handling of assets, care, housing, etc.

Part of the problem could be the lack of binding standards on guardians, although standards have been proposed by the National Guardianship Association. To that point, guardianship as a field has been inconsistent in its training and expectations across the country.²² “Training requirements for new guardians range from no training required for new guardians (e.g., Indiana) to completion of a defined training program (e.g., Illinois).”²³ The Indiana Supreme Court has recently formed a guardianship task force to address this deficiency and tasked the group with reporting findings and recommendations on best practices, future programming, policies, and procedures to improve Indiana’s guardianship system.²⁴

B. Silver Wave/Tsunami

There is currently a growing proportion of elderly individuals in the United States. By 2030, one-fifth of the United States population will be made up of individuals age 65 years and older.²⁵ “People aged 65 and older account for

21. *Testimony Before the Senate Family and Children Services Committee on Senate Bill 396 Regarding Guardian Reimbursement and Medicaid Eligibility*, 120th Gen. Assemb., 1st Reg. Sess. (Ind. Jan. 23, 2017) (statement of Ken Bennett, Senior Counsel, Center for At-Risk Elders) (video of Jan. 23, 2017, 10:00 a.m. meeting, accessible via committee webpage), https://iga.in.gov/session/2017/video/committee_family_and_children/ [https://perma.cc/S3TZ-GPMJ] [hereinafter *Testimony*].

22. Hamre & Nord, *supra* note 4.

23. *Id.*; 20 ILL. COMP. STAT. 3955/1 (2024).

24. *In re Ord. Establishing the Ind. Guardianship Oversight Task Force*, No. 24S-MS-00399, 2024 Ind. LEXIS 704 (Ind. 2024).

25. ‘Silver Tsunami’ And Other Terms That Can Irk The Over-65 Set, NPR (May 19, 2014, 3:23 AM), <https://www.npr.org/2014/05/19/313133555/silver-tsunami-and-other-terms-that-can-irk-the-over-65-set> [https://perma.cc/36RV-HLBK].

more than one-third (35%) of U.S. health care spending.”²⁶ As this population grows, it is logical that states will expend more resources in caring for this older population through the combination of Medicare and Medicaid, especially given the fact that the two often work hand-in-hand.²⁷ Medicaid represents nearly one-fifth of money spent on healthcare in the United States.²⁸ With this growing population of elderly, those who are low income, and those who have mental illnesses/disabilities, state budgets are unavoidably going to be strained. A larger portion of states’ populations are going to fit within the parameters of eligibility for Medicaid. Consequently, a larger amount of money in state budgets—which may not affect the proportion of the budget—will have to be allocated for the care of these individuals.

Further, it has been widely recognized that there is what has been dubbed a “mental health crisis” throughout the world, but especially in the United States. “It is estimated that one in five U.S. adults live with a mental illness (59.3 million in 2022; 23.1% of the U.S. adult population).”²⁹ This trend was recognized before the COVID-19 pandemic but has been exacerbated by pandemic-related effects.³⁰ Importantly, some recognized mental illnesses qualify an individual for Medicaid coverage. “People with behavioral health needs, especially those with serious mental illness, may . . . qualify for Medicaid based on having a disability.”³¹ In 2022, there were 15.4 million adults with a serious mental illness,³² or 6% of the adult population in the United States.³³ In many states where one has a mental illness that makes them eligible for Supplemental Security Income (SSI), they are automatically eligible for Medicaid.³⁴ As of 2011, 50% of adults and 47% of children eligible for

26. Deborah Wince-Smith, *Bracing for the Silver Tsunami*, FORBES (Feb. 28, 2022), <https://www.forbes.com/sites/deborahwince-smith/2022/02/25/bracing-for-the-silver-tsunami/> [https://perma.cc/T5C2-C79J].

27. This is evidenced by the purpose for the creation of the two programs—namely, an aging population with too little resources to pay for their own care.

28. Elizabeth Williams et al., *Medicaid Enrollment & Spending Growth: FY 2024 & 2025*, KAISER FAM. FOUND. (Oct. 23, 2024), <https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-spending-growth-fy-2024-2025/> [https://perma.cc/M6TX-FVNN].

29. *Mental Illness*, NAT’L INST. MENTAL HEALTH (Sep. 2024), <https://www.nimh.nih.gov/health/statistics/mental-illness> [https://perma.cc/7RCQ-Z4PM].

30. *Protecting the Nation’s Mental Health*, CDC (Aug. 8, 2024), <https://www.cdc.gov/mental-health/about/what-cdc-is-doing.html> [https://perma.cc/9TJZ-85SN].

31. Julia Zur et al., *Medicaid’s Role in Financing Behavioral Health Services for Low-Income Individuals*, KFF (June 29, 2017), <https://www.kff.org/mental-health/issue-brief/medicaids-role-in-financing-behavioral-health-services-for-low-income-individuals/> [https://perma.cc/UX6Z-9GEZ].

32. *Mental Illness*, *supra* note 29. (serious mental illness (SMI) is defined as a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities; the burden of mental illnesses is particularly concentrated among those who experience disability due to SMI).

33. *Id.*

34. Zur et al., *supra* note 31.

Medicaid based on having a disability had a behavioral health diagnosis.³⁵ While Medicaid typically does not lay out the specific mental illnesses it will cover, conditions such as bipolar disorder and schizoaffective disorder have rendered individuals Medicaid-eligible in states such as Arizona and Virginia.³⁶ For comparison sake, Indiana at least lists the specific mental disorders that render an individual eligible for Social Security.³⁷ Additionally, Medicaid coverage can be more comprehensive than private insurance coverage for behavioral health services, “such as case management, individual and group therapy, detoxification, and medication management, in addition to psychiatric hospital visits.”³⁸ Without Medicaid, one with a mental health diagnosis would likely have significant difficulty in paying for their care unless they are financially well-off. Medicaid expenditures for those with mental illnesses are high due to this group’s additional health needs. In comparison to enrollees without mental illnesses, those with behavioral health issues are more likely to have “comorbid chronic physical conditions” and lower overall health.³⁹ Although those with behavioral health conditions account for only 20% of the Medicaid population, they are responsible for about half of Medicaid spending.⁴⁰ Said differently, Medicaid spends about four times more on those with mental health diagnoses than those without said diagnoses.⁴¹

The number of individuals throughout the country with some form of recognized mental illness or mental health diagnosis is rapidly growing. A large portion of individuals with this diagnosis rely heavily on Medicaid for mental health and physical health treatment compared to those without such a diagnosis. Considering the financial burden on states and the widely reported issues related to addressing the mental health crisis, guardianships are needed more than ever to coordinate mental health care for those eligible for Medicaid. Guardians, properly carrying out their duties, will help to alleviate the issues states are dealing with related to the mental health crisis and potentially help reduce the “negative publicity” surrounding the care of the lower-income individuals and marginalized groups.

C. Thesis and Roadmap

Guardianship services are severely underfunded in Indiana for protected persons whose care is covered by Medicaid. The Indiana General Assembly should balance their budgetary constraints with the substantial need for quality

35. *Id.*

36. *Id.*

37. *Disability Evaluation Under Social Security*, SOCIAL SEC. ADMIN., <https://www.ssa.gov/disability/professionals/bluebook/12.00-MentalDisorders-Adult.htm> [https://perma.cc/K94W-DMC2] (last visited Nov. 20, 2025).

38. Zur et al., *supra* note 31.

39. *Id.*

40. *Id.*

41. *Id.*

care for the growing elderly and incapacitated population. Specifically, the General Assembly should target a “goldilocks” rate of \$100 per month reimbursement by Medicaid, which would be the median of the current rate of \$35 per month per person and the \$175 rate that was proposed in 2017. This can serve as a cap or limit, with the understanding that guardianship services for those not eligible for Medicaid, or otherwise possessing sufficient resources, are to be assessed under a reasonable compensation framework. The increased compensation structure through Medicaid could also be limited in its applicability to VASIA programs with certified guardians. Additionally, the Indiana Guardianship Task Force should recommend a caseload they feel is appropriate for any one practitioner or organization and adopt “reasonable compensation” criteria. This would incentivize entry into the guardianship profession, more diligent work, and better health and financial outcomes for incapacitated individuals. Further, these steps remedy the failings of different professional ethics rules in prohibiting poor guardianship practices. Finally, the current grants to VASIA programs in place in Indiana should potentially be replaced with a higher reimbursement rate for guardians across Indiana.

First, this Note discusses what a guardianship is, the need and reasons for guardianship, and the typical duties of a guardian. This includes a look at guardianships in the State of Indiana and common practices of Indiana guardianship organizations. Second, this Note explains the history and role of Medicaid in aiding the growing elderly or incapacitated population in paying for care, including guardianship fees. Next, it lays out the standards utilized by other jurisdictions. Then, it explores Indiana’s current guardianship fee statute and attempts to change it. Finally, the different approaches are analyzed, and solutions are proposed involving raising the fixed fee for guardianship services, reasonable compensation, and fee standards established by different professional associations.

II. BACKGROUND

A. What Is a Guardianship?

Guardianship organizations and VASIA organizations serve an important role in our society. The ability to establish a guardianship arises from the State’s *parens patriae* power, which “obligates the state to care for the vulnerable and the less fortunate.”⁴² Guardianships are established in order to manage the care needs of an individual who has been deemed incapacitated and incapable of taking care of themselves or providing informed consent.⁴³ This includes persons of any age, but about 80% of guardianships are in place for individuals

42. FROLIK & BARNES, *supra* note 1, at 351 (quoting *In the Matter of the Guardianship of Hedin*, 528 N.W.2d 567 (Iowa 1995)).

43. *Id.* at 453.

aged 60 and older.⁴⁴ Under Indiana law, one is incapacitated if they are partially or completely unable to manage their property, care for themselves, or both.⁴⁵ This can be the result of mental illness, physical illness, habitual drunkenness, excessive use of drugs, or fraud, duress, or undue influence by others.⁴⁶ So, a guardianship may be established regardless of whether an individual has a mental illness or infirmity. It involves filing a petition for guardianship as a result of being notified by a party or observing that one cannot care for themselves. Importantly, a guardian can be an individual or an entity.⁴⁷

Guardianship usually entails arranging appropriate medical care for the protected person or individual under guardianship as well as managing their assets as a fiduciary. In Indiana, a guardian's duties include being responsible for an incapacitated person's care, custody, and property.⁴⁸ Specifically, this involves identifying what care services are necessary for the individual, handling their finances in a fiduciary manner, applying for appropriate public benefits to ensure their needs are met, monitoring the quality of their care and services, and advocating for quality of life in the least restrictive environment.⁴⁹ In other words, guardianships include: guardian of the person, guardian of the estate, and guardian of the person and estate.⁵⁰

Depending on your status as guardian, you might be able to do things like receive the protected person's money and apply those funds towards their living arrangements, personal effects, medical care, education or other services. You also might be able to invest the person's money, pay people who care for them, delegate responsibilities, select their place of living, arrange for their medical care, protect their personal property, enter into contracts on their behalf, and provide consent.⁵¹

Guardians should be "sufficiently acquainted" with incapacitated individuals' capabilities, limitations, and needs and are to report to the court on

44. *Id.* at 349

45. *Incapacity and Guardianship in the Hoosier State*, HAWKINS ELDER LAW (Jan. 20, 2021), <https://www.hawkinselderlaw.com/incapacity-and-guardianship-in-the-hoosier-state/> [https://perma.cc/CKX8-HMF3].

46. *Id.*

47. Hamre & Nord, *supra* note 4.

48. See Greene, *supra* note 5.

49. *Testimony*, *supra* note 21 (statement of Ken Bennett, Senior Counsel, Center for At-Risk Elders); see Hamre & Nord, *supra* note 4 (many individuals who qualify for guardianship or who are under guardianship simultaneously qualify for public benefits through Social Security Disability, Medicare, Medicaid, etc.; some have noted that nearly 60% of young adults with intellectual and developmental disabilities between the ages 18-22 that receive funded supports are under guardianship).

50. *Incapacity and Guardianship in the Hoosier State*, *supra* note 45.

51. *Id.*

their physical or mental well-being.⁵² A VASIA program “provides trained and supervised volunteers to serve as court-appointed limited guardians to assist this vulnerable population and the courts in decision-making regarding these critical needs.”⁵³

In 2013, the Indiana General Assembly established the Adult Guardianship Office under the purview of Indiana Supreme Court.⁵⁴ This Adult Guardianship Office provides general resources for courts on issues related to adult guardianship and administers funding for VASIA programs throughout the state.⁵⁵ In 2023, the Office “awarded \$1.3 million in matching funding to 20 volunteer-based guardianship programs, serving 52 counties” throughout the State of Indiana.⁵⁶ The programs assist over 800 incapacitated adults who do not have family or others who are suitable to provide care for them.⁵⁷ While the programs vary in size, there is a shortage in terms of being able to take care of the individuals who need guardianship, considering how many counties are unrepresented in the funding mentioned above. Not only that, but there are far more individuals in need than staff available to serve as their guardians. In some cases, this leads to individuals and programs taking on too many clients.⁵⁸

Some nonprofits receive referrals from hospitals to potentially take on new clients/protected persons under guardianship.⁵⁹ CARE, for example, receives referrals from three hospital systems to help fund their work through subscription grant agreements.⁶⁰ CARE also receives referrals from Adult

52. Greene, *supra* note 5.

53. *Volunteer Advocates for Seniors and Incapacitated Adults*, FRANCISCAN HEALTH, <https://www.franciscanhealth.org/patient-resources/programs-and-support/vasia> [https://perma.cc/T47Q-4JTF] (last visited Nov. 20, 2025).

54. *Adult Guardianship*, IN.GOV, <https://www.in.gov/courts/iocs/adult-guardianship/> [https://perma.cc/8PJJ-6UZ9] (last visited Nov. 19, 2024).

55. *Id.* It also administers a guardianship registry that provides the public with non-confidential information like the name of the protected person, the name of the guardian, whether the guardianship case is active, and the county issuing the guardianship. It serves as a vital tool for different entities frequently engaging with protected person—such as law enforcement, hospitals, banks, and government agencies—to know whether the person is under guardianship and who needs to be contacted on behalf of the protected person. “It is also an important tool for courts, tracking the number and types of guardianships filed in each jurisdiction.”

56. *Id.*

57. *Id.*

58. *See* Greene, *supra* note 5.

59. *See* Marion County LR49-PR00-413.2, available at <https://www.in.gov/courts/files/marion-local-rules.pdf> [https://perma.cc/37CD-E8KN] (last visited Jan. 31, 2025) (this is often done because the Marion County, Indiana Local Rules require that one seeking guardianship provide the court with a physician’s report attesting that the one sought to be placed under guardianship is incapacitated); *see also About Us: Referral Partnerships*, CARE FIRST INC., <https://www.carefirstincbrownburg.com/about> [https://perma.cc/Y9U6-64RS] (last visited Nov. 20, 2025) (noting that referrals are received from hospitals, nursing homes, group homes, agencies, and families in need).

60. *Testimony*, *supra* note 21 (statement of Ken Bennett, Senior Counsel, Center for At-Risk Elders).

Protective Services (APS) in Marion County.⁶¹ Importantly, Indiana does not have a “public guardianship” program where the State provides guardianship services to those in need; instead, Indiana focuses on the development and utilization of volunteer guardianship programs referred to as VASIA programs under Indiana Code § 29-3-8.5.⁶² Although the State does not have a government entity that carries out guardianships, it funds some guardianship services carried out by nonprofit organizations—though, as this Note points out, inadequately.

B. Medicaid

Central to guardianship services is the method of compensation they receive, which largely comes from Medicaid. Medicaid is one of the most prevalent examples of cooperative federalism. In the 1960s, under the administration of Lyndon Johnson, Medicare and Medicaid were created in order to pay the increasing costs of medical care for a growing class of individuals who were impoverished and could not afford to pay.⁶³ Elderly individuals made up a large portion of this population.⁶⁴ “Medicaid and the Children’s Health Insurance Program (CHIP),” specifically, “cover more than 87 million people, about 24 percent of the U.S. population.”⁶⁵ Medicaid was built on federal foundation but allows substantial leeway in terms of policy choices within the federal statutory structure; this is what is known as cooperative federalism, where the federal government provides an overarching regulatory scheme, but states may implement many of their own policies.⁶⁶ In this scenario, each state’s Medicaid laws may look different.⁶⁷ States that accept federal money, however, must comply with certain mandatory provisions that must be included in their Medicaid plan, mostly having to do with covering costs for low-income people.⁶⁸ This welfare-based perspective has contributed to the limitations of Medicaid as only applying to the “deserving poor” and has thus limited eligibility due to negative connotations surrounding the idea of providing “handouts.”⁶⁹

“Medicaid is a jointly funded program operated by individual states and the federal government that provides medical and financial assistance to low-income persons (many who are seniors) who are unable to fund their medical care. The program is structured on a voluntary, opt-in basis in that states may

61. *Id.*

62. *Id.*; see also IND. CODE § 29-3-8.5 (2020).

63. NICOLE HUBERFELD ET AL., THE LAW OF AMERICAN HEALTH CARE 54–55 (3d ed. 2023).

64. *Id.*

65. *Id.* at 105.

66. *Id.* at 106.

67. *Id.*; Moran, *supra* note 1.

68. HUBERFELD ET AL., *supra* note 63, at 106.

69. *Id.* at 107.

elect, but are not required, to participate.”⁷⁰ States that opt in must create and develop their own state Medicaid Plan for approval by the federal government.⁷¹ The plan must comply with the Medicaid Act and regulations proposed by the Secretary of the Department of Health and Human Services.⁷² The regulations typically define “income” as property which can be applied directly, or by sale or conversion, to meet basic needs, such as food, shelter, and medical expenses.⁷³ “The federal Medicaid statute mandates the provision of a ‘personal needs allowance’ in the state program by providing that a state plan will not receive federal approval unless certain deductions or ‘allowances’ are allowed to be taken from a recipient’s monthly income, including a ‘personal needs’ allowance.”⁷⁴

Each state has a Medicaid program of its own that provides money to be set aside. Otherwise, any income they have over a certain amount—which varies state by state—must be used to pay for their care. Individuals are required to contribute all of their available income and assets to pay for the costs of any nursing facility they live in, while the state pays the difference between the recipient’s available income and the cost of their care.⁷⁵

C. Other States’ Approaches to Guardianship Fees

It is worth noting that in many cases, guardians are eligible to receive fees for their services from protected persons with the ability to pay. “In some states, fees are based on a percentage of the total assets. In others, the fees must be reasonable with reference to the work done and the size of the estate. Many courts limit fees to hourly rates that are relatively low in relation to a typical hourly rate for an attorney.”⁷⁶ Within the last few years, a few states have proposed legislation regarding guardianship fees.⁷⁷ Illinois has proposed that guardianships be entitled to “reasonable and appropriate compensation for guardianship duties.”⁷⁸ All fees must be reviewed and approved by a court in a petition for fees.⁷⁹ Illinois SB 80 lays out factors to be considered by the court in awarding guardianship fees, yet it does not provide a specific amount that the fees may not exceed per month.⁸⁰ These factors include:

70. Brien M. Penn, *The Maryland Survey: 2000-2001*, 61 MD. L. REV. 795, 940 (2002).

71. *Id.*

72. *Id.*

73. *Id.* at 941–942.

74. *Id.* at 942.

75. *Id.* at 941.

76. FROLIK & BARNES, *supra* note 1, at 361.

77. Comm’n on Law & Aging, *Guardianship Reform: 2021 Adult Guardianship Legislation Summary*, AM. BAR ASS’N 1 (2021), https://www.americanbar.org/content/dam/aba/administrative/law_aging/2021-guardianship-leg-summry.pdf [<https://perma.cc/TKU9-T77V>].

78. S.B. 80, 102nd Gen. Assemb. (Ill. 2021), <https://www.ilga.gov/legislation/102/SB/PDF/10200SB0080.pdf> [<https://perma.cc/8LZZ-JXFT>].

79. *Id.* at 26.

80. *Id.* at 25–26.

- (1) the powers and duties assigned to the guardian by the court;
- (2) the necessity of any services provided;
- (3) the time required, the degree of difficulty, and the experience needed to complete the task;
- (4) the needs of the ward and the costs of alternatives; and
- (5) other facts and circumstances material to the best interests of the ward or his or her estate.⁸¹

Florida acted similarly.⁸² Additionally, Delaware SB 85 allows for guardianship fees in accordance with standards established by the State Guardianship Commission and approved by the Chancery Court.⁸³

Advocacy work is not considered reasonable compensation for guardianship fee purposes.⁸⁴ In *Lamb*, the guardians, the Hardmans, requested guardianship fees of \$225 per month for two of their wards for guardian services and \$150 per month for “special advocacy fees” in their triennial guardian’s reports.⁸⁵ The Washington Department of Social and Health Services (DSHS) filed an objection to the Hardmans’ requested guardian fees arguing that Washington law limits routine guardian fees to \$175 per month and lobbying and community activism are not within the definition of permissible “extraordinary fees.”⁸⁶ DSHS noted that any increase in guardian fees, which are paid prior to a client’s participation in cost of care (similar to Indiana), reduces the amount otherwise available to reimburse the State for care.⁸⁷ This is the same argument against increasing the allowable fee in Indiana.

Maryland courts have rejected the idea of guardianship “commissions” or fees being considered part of one’s personal needs allowance in a Medicaid set-off.⁸⁸ The Maryland Court of Appeals held in *Department of Health and Mental Hygiene v. Campbell* that guardianship commissions and legal fees were not the kind of “personal needs” expenses contemplated by Code of Maryland Administrative Regulations (COMAR) § 10.09.24.10D.⁸⁹ The *Campbell* court further held that the \$40 per month allowance for personal needs was meant to cover essential items like those used to maintain one’s hygiene as is implied by

81. *Id.* at 26 (importantly, the compensation awarded through this fee petition comes from the guardianship estate; in other words, this is the case when an individual has the ability to pay a private guardian, so Medicaid is not paying the fees; otherwise, it is likely that the public guardian would care for the protected person).

82. FLA. STAT. § 744.108 (2025).

83. AM. BAR ASS’N, *supra* note 77, at 8.

84. *In re Guardianship of Lamb*, 265 P.3d 876, 885 (Wash. 2011).

85. *Id.* at 880.

86. *Id.* at 880–81; WASH. ADMIN. CODE § 388-79A-010 (2018).

87. *In re Guardianship of Lamb*, 265 P.3d at 881.

88. Penn, *supra* note 70, at 936; Dep’t of Health and Mental Hygiene v. *Campbell*, 771 A.2d 1051, 1058–59 (Md. App. Ct. 2001).

89. Penn, *supra* note 70, at 936; *Campbell*, 771 A.2d at 1059; MD. CODE REGS. 10.09.24.10(D).

the small amount permitted.⁹⁰

New Jersey takes a different approach by allowing a certain percentage of one's income to be used for the provision of a private guardian. Specifically, New Jersey law mandates that an adult under guardianship contribute 75% of his or her disposable monthly income towards the cost of their care.⁹¹ "Further, as much as six percent of his total gross annual income may be used toward a guardianship fee."⁹² However, this expense is not permitted where guardianship is provided through the Bureau of Guardianship Services (court appointed and government provided).⁹³ Alaska similarly follows a sliding scale approach, where fees range from \$40 per month for a ward with assets less than \$10,000 to \$145 per month if the ward has more than \$100,000 in assets.⁹⁴

Some courts hold that it is a mandatory requirement that a guardian must confer a benefit to a protected person to be entitled to guardianship fees in statutes on the subject.⁹⁵ Nevada has no such strict requirement; rather, Nevada Revised Statutes § 159.344 employs permissive language—"may"—to invite courts to consider any benefit to the protected person.⁹⁶

Likewise, Washington D.C. has a statute addressing guardianship of infants that serves as a comparable example. The D.C. statute provides for reasonable compensation for guardianship services, but provides that the guardian's commission is not to exceed 5% of the property of the estate collected, if and when disbursed.⁹⁷ Once again, certain states appear to favor the reasonable compensation approach while preferring to set a limit on what the reasonable compensation should be. It stems from a policy grounded in the notion that a guardian's fees should be determined on a case-by-case basis, disregarding the excess costs created by a court having the duty to determine what reasonable compensation entails. Washington D.C. courts have held the reasonable compensation determination "must be based upon (1) the character of the services rendered, (2) the amount of time spent, (3) the size of the estate administered, and (4) the benefits that accrued to the estate as a result of the

90. Penn, *supra* note 70, at 948; *Campbell*, 771 A.2d at 1059.

91. *In re P.A.*, No. A-5521-16T2, 2019 N.J. Super. Unpub. LEXIS 128, at *2 (N.J. Super. Ct. App. Div. 2019); N.J. ADMIN. CODE § 10:46D-3.1(a), (b) (2024) ("Total monthly net income less personal needs allowance (PNA) and, where documented, a plan to achieve self-support (PASS) = disposable monthly income.").

92. See N.J. ADMIN. CODE § 10:46D-3.1(f) (2024).

93. *Id.*

94. Catherine Seal & Spencer Crona, *Standards for Guardian Fees*, 2012 UTAH L. REV. 1575, 1607 (2012).

95. See e.g., *In re Guardianship of Sleeth*, 244 P.3d 1169, 1174 (Ariz. Ct. App. 2010) ("We cannot agree that the legislature intended that courts overlook whether an attorney's or a fiduciary's services produced any value or benefit to the protected person."); *In re Guardianship of Ansley*, 94 So. 3d 711, 713 (Fla. Dist. Ct. App. 2012) (requiring courts to consider benefits conferred despite the statute's failure to list such benefits as a factor in an enumerated list of factors to support guardianship fees).

96. *In re Jones*, 2021 Nev. App. Unpub. LEXIS 601, at *7-8 (Nev. Ct. App. 2021); see NEV. REV. STAT. § 159.344(5) (2024) (providing factors for consideration).

97. D.C. CODE § 21-143 (2026); *Mitchell v. Ensor*, 412 F.2d 155, 160 (D.C. Cir. 1969).

services.”⁹⁸

Indiana’s neighbor state, Illinois, has a different approach. Illinois’s approach towards guardianships involves a state-run organization devoted to guardianships called the Office of State Guardian (OSG).⁹⁹ Within the Illinois Administrative Code, the OSG is permitted to receive \$250 per month per guardianship for guardianship of the person.¹⁰⁰ For guardianship of the estate, guardians are entitled to a monthly fee of \$300 when the individual under guardianship has an estate of \$24,999 and below in liquid assets.¹⁰¹ For an estate of \$25,000 and above, the guardian is entitled to “[u]sual, customary and reasonable fees, for public or appointed guardians in the county where the case is filed.”¹⁰² Additionally, the schedule for fees associated with the assessment of a one-time case opening fee for guardianship of the person, estate, or both are: \$500, \$750, and \$1,000, respectively.¹⁰³ Similarly, the assessment of a guardianship petitioning fee is \$500.¹⁰⁴ Although, these figures are just a one-time fee, they are significantly greater than the \$35 per month allowable through Medicaid under the Indiana Administrative Code (as opposed to individuals with resources that are under the reasonable fees standard).¹⁰⁵ More importantly, the monthly fees under the Illinois Administrative Code are significantly greater than those allowed under the Indiana Administrative Code. As are the typical fees offered by the New Mexico Office of Guardianship to contracted guardianship organizations, which may be approximately \$325 per month per client served,¹⁰⁶ and Texas’ Medicaid reimbursement, which allows compensation for guardians up to \$175 per month per client.¹⁰⁷

D. Indiana Statute

Indiana law regarding guardianship fees reimbursed through Medicaid has gone unchanged over several years. It does not provide a reasonable compensation framework and is not tied to any percentage of the protected person’s assets or estate.¹⁰⁸ First, Indiana law provides that individuals eligible for Medicaid who

98. *Ensor*, 412 F.2d at 160.

99. ILL. ADM. CODE tit. 59, § 301.10 (2020); *see also* S.B. 80, 102nd Gen. Assemb. (Ill. 2021), <https://www.ilga.gov/legislation/102/SB/PDF/10200SB0080.pdf> [<https://perma.cc/8LZZ-JXFT>].

100. ILL. ADM. CODE tit. 59, § 301.60 (2020).

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. 405 IND. ADMIN. CODE 2-1.1-7(b)(3) (2025).

106. Ronnie Greene & Holly Barker, *Guardians’ Dark Side: Lax Rules Open the Vulnerable to Abuse*, BL (Mar. 6, 2023), <https://news.bloomberglaw.com/us-law-week/guardians-dark-side-lax-rules-open-the-vulnerable-to-abuse> [<https://perma.cc/SVQ7-ZKLT>].

107. Bruce P. Bower, *Access to Justice*, 74 TEX. BAR J. 732, 733 (2011).

108. *See* 405 IND. ADMIN. CODE 2-1.1-7(b)(3) (2025); *cf.* Seal & Crona, *supra* note 94, at 1608–09.

are not living at home and are receiving care at a hospital or nursing facility are granted a personal allowance of \$52 per month that may be exempt from income eligibility consideration.¹⁰⁹ Under 405 Indiana Administrative Code 2-1.1-7, an institutionalized individual under guardianship may have an amount not exceeding \$35 per month set aside from their income to pay guardianship fees.¹¹⁰ This scenario applies to individuals who are considered very poor and government benefits are typically their only source of income.¹¹¹ It is categorized as “increased personal needs,” an amount in addition to the \$52 set-aside for the individual under guardianship to do with as they please.¹¹² The administrative code provision relating to guardianship fees addresses how income is to be dealt with after an individual is determined to be eligible for Medicaid. It addresses income that is to be paid from the eligible individual’s income to the institution that they are residing in.¹¹³ The procedures prescribed by the code instruct that in determining how much income is to be paid to the institution: first, establish total income not excluded by federal statute; then, subtract the personal needs allowance; and then, subtract the guardianship fees, health insurance premiums, necessary care not covered by the state plan, and taxes owed.¹¹⁴

Medicaid is the party that handles the payment of guardianship fees because of the protected person’s inability to pay. This is why they are typically under guardianship in the first place; they cannot coordinate their own medical care due to an incapacity and many do not have the financial means to pay for their care, let alone a guardian. Just because one is able to pay does not mean that a VASIA program will not act as guardian. If the protected person does have sufficient resources, guardianship organizations are entitled to request reasonable guardianship fees for their services, essentially at a cost, to be determined by a court. If a protected person has family or friends who are willing to care for them and/or they have the means necessary to pay for their own care, guardianship organizations largely do not get involved because there is not as great a need. Instead, the sad reality is that many individuals that these organizations take on as clients do not have loved ones who are present or adequately suited to care for them and the protected person has hardly any assets. Moreover, some have bad actors in their lives looking to take advantage

109. IND. CODE ANN. § 12-15-7-2 (2025).

110. 405 IND. ADMIN. CODE 2-1.1-7 (2025); *Testimony*, *supra* note 21 (statement of Ken Bennett, Senior Counsel, Center for At-Risk Elders) (currently, any guardian for a Medicaid nursing home resident is only allowed to be paid \$35 per month for their services (citing Indiana Health Coverage Program Policy Manual § 3455.15.10); notably, this has been the reimbursement level since adopted in 2014 in the Administrative Code).

111. *See* 405 IND. ADMIN. CODE 2-1.1-5(g) (2025).

112. 405 IND. ADMIN. CODE 2-1.1-7(b)(3) (2025); *see also* IND. CODE ANN. § 12-15-7-2 (2025) (categorizing the allowance as “increased personal needs,” a separate allowance from the \$52 monthly set-aside and in addition to the \$52 reserved for the individual under guardianship to use as they choose).

113. 405 IND. ADMIN. CODE 2-1.1-7(b) (2025).

114. *Id.*

of them and exploit their financial resources. This is why hospitals typically work with guardianship organizations to try to arrange care—if for no other reason than to open up a bed for a paying customer—for those who do not appear to have loved ones or the ability to pay. It also serves the purpose of reducing the hospital’s liability so that they are not performing illegal discharges of individuals without capacity.

III. ANALYSIS AND SOLUTIONS

A. Attempts to Change Indiana Law

In 2017 a Senate Bill was proposed in the Indiana General Assembly in an attempt to increase the funding for guardianship organizations via Medicaid reimbursements.¹¹⁵ This bill would have increased the Medicaid reimbursement for guardianship fees from \$35 per month to an amount not to exceed \$175 per month.¹¹⁶ The Indiana State Senate attempted to recognize the great need for funding among nonprofit guardianship programs by increasing one source of income. Beyond that, an increase in the Medicaid reimbursement would allow these programs to be compensated fairly for the vital work they do, which would allow them to hire more staff and take on more clients, as there is a growing need for guardianship assistance.¹¹⁷ In response to the proposed legislation, the Office of Fiscal and Management Analysis composed a Fiscal Impact Statement that acknowledged that there is no known data indicating how many individuals who are Medicaid-eligible and living in institutions have court appointed guardians, including how many of those guardians are paid fees through Medicaid.¹¹⁸ But it did note that the proposed legislation would increase the state’s fiscal responsibility (because it receives matching federal Medicaid funds) by \$48.17, or a total of \$60.22 per month per protected person.¹¹⁹

In his testimony before the General Assembly, Ken Bennett of CARE noted that “empirical studies have shown that access to trained guardians tends to decrease the overall costs to the medical system [including Medicare and Medicaid] by ensuring preventative care and services are provided, as well as improving compliance with post-acute discharge orders, thus decreasing

115. See S.B. 396, 120th Gen. Assemb., 1st Reg. Sess. (Ind. 2017), <https://iga.in.gov/pdf-documents/120/2017/senate/bills/SB0396/SB0396.04.COMH.pdf> [https://perma.cc/S8SA-6B6D].

116. *Id.*

117. *In re* Ord. Establishing the Ind. Guardianship Oversight Task Force, No. 24S-MS-00399, 2024 Ind. LEXIS 704, at *1 (Ind. 2024) (“Each year, the number of vulnerable Hoosiers requiring guardianship or other caretaking services continues to rise. Caring for these individuals by coming together and creating a better system is both crucial and timely.”).

118. Fiscal Impact Statement from Office of Fiscal Mgmt. and Analysis on Guardian Reimbursement and Medicaid Eligibility (Mar. 24, 2017), <https://iga.in.gov/pdf-documents/120/2017/senate/bills/SB0396/fiscal-notes/SB0396.04.COMH.FN001.pdf> [https://perma.cc/Z6AD-U768] [hereinafter Fiscal Impact Statement]

119. *Id.* at 2.

unnecessary readmissions.”¹²⁰ Bennett also argued the passage of Senate Bill No. 396, and increased guardianship fees more generally, would significantly expand access to guardianship services for Indiana’s incapacitated adults in need, reasonably compensate guardians for their work, improve the quality of guardianship services by encouraging greater professionalism, and help to reduce the overall costs to Indiana’s Medicaid program.¹²¹

Increasing guardianship fees would also be proportional to the size of a guardianship program. Currently, as stated previously, there were 20 VASIA programs in the State of Indiana that received grants worth a combined \$1.3 million from the Indiana Supreme Court subdivision.¹²² Hypothetically, if the 20 VASIA programs were to each get approximately \$65,000 through a grant from the State were instead allowed to be reimbursed \$100 per client per month for a year, and the 20 organizations each had an average of 54 clients, this would be approximately the same amount of money as what they are receiving via the grant from the State. Under this increased fee reimbursement hypothetical, it would cost the State \$1.296 million dollars per year, whereas the current system costs the State \$1.3 million dollars per year, apart from the excluded income from the \$35 set-aside currently in place paid by the State.¹²³ Additionally, when considering the costs of employing staff within a guardianship organization, \$65,000 does not even cover one employee taking into consideration salary and benefits, even with a modest salary common of a nonprofit. Larger VASIA programs could bring in greater guardianship fees more commensurate with the number of clients they take on and appropriately fund their activities. The Indiana Adult Guardianship Office uses a number of factors for distributions of matching grants as opposed to splitting evenly among counties and programs, but increasing the reimbursement rate through Medicaid on a fee-for-service basis would be a more rational approach.¹²⁴

Unfortunately, there is no data indicating how many individuals receive the

120. *Testimony, supra* note 21 (statement of Ken Bennett, Senior Counsel, Center for At-Risk Elders); *Who’s Overseeing the Overseers? A Report on the State of Adult Guardianship in Indiana*, IND. ADULT GUARDIANSHIP STATE TASK FORCE 29 (Feb. 2012), <https://www.in.gov/courts/iocs/files/ad-guard-2012-full-report.pdf> [<https://perma.cc/9AFY-QVSL>].

121. *Testimony, supra* note 21 (statement of Ken Bennett, Senior Counsel, Center for At-Risk Elders); see also *Public Guardianship Saves Money*, WASH. STATE, <https://www.courts.wa.gov/content/publicUpload/Office%20of%20Public%20Guardianship%20-%20About%20Us/OPG%20Saves%20Lives.pdf> [<https://perma.cc/7EW9-DYSP>] (last visited Feb. 23, 2025) (noting that guardianships promote preventative care that reduces the “revolving door” of ER visits) (presumably, the reduced ER visits would lower costs to the state through Medicaid and would not result in hospitals attempting to recoup this money by increased costs to the wider patient population).

122. IN.GOV, *supra* note 54 (referring to archived information accessed via permalink).

123. See *id.* (it is unclear whether and how much this amount may vary depending on the number of VASIA programs and money available for grants).

124. See IND. SUP. CT., ADULT GUARDIANSHIP OFF., CHECKLIST FOR 2023 VASIA APPLICATION, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.in.gov%2Fcourts%2Fiocs%2Ffiles%2Fvasia-checklist-instructions.docx> [<https://perma.cc/Q8EG-DS8J>] (last visited Nov. 20, 2025).

\$35 per person per month for guardianship fees, and thus it is unclear was the current fiscal impact is on a larger scale when combined with the grants to the twenty guardianship organizations.¹²⁵ But, even if the fiscal impact is greater under a statutory scheme with a larger reimbursement than \$35, the health outcomes would be greatly improved by the increased utilization of guardianship organization with expertise and experience who can properly handle a protected person's assets and coordinate appropriate medical care. What is clearer is that if a single guardian is working with what is considered a reasonable caseload—say, twenty clients—then for Medicaid recipients the guardian would be paid \$35 per month for each of those twenty clients for 12 months, totaling \$8,400 per year. It is clear why individuals like Debra Woods have to take on so many clients. If the number was increased to \$100 per month, this would at least help support staff more than the current reimbursement.

Such a low number makes it very difficult for a guardianship organization to provide the much-needed care for a large population with no loved ones or very few assets. Even a well-run organization cannot survive on the current reimbursement. Moreover, what gets lost in the criticism of Debra Woods is that she uses an hourly rate of \$35 per hour for clients who do have the ability to pay,¹²⁶ a number likely far lower than her colleagues in the field.¹²⁷ Charging such a low fee for those who can pay actually reduces the government's financial burden for guardianship-related expenses!¹²⁸ Expecting practitioners to charge such a low amount for protected persons who can pay, like Debra Woods, is asking too much and would further dissuade talented individuals from the practice. Instead, the State should incentivize taking on guardianships with Medicaid paying the bills by bringing the reimbursement at least slightly closer to parity with what those with the ability to pay are charged.

B. Establish a Higher Reimbursement Rate Per Month

One solution to this problem is to increase the reimbursement rates, as the legislature has already attempted to do. However, lawmakers may have balked at the proposition because the increase was so large, raising concerns about fiscal impact and long-term stability. Some states set a fixed monthly allowance

125. Fiscal Impact Statement, *supra* note 118, at 1; *see* Greene, *supra* note 5.

126. Greene, *supra* note 5.

127. *See e.g.*, Greene & Barker, *supra* note 106 (stating that one New Mexico guardianship organization charged private clients with greater financial means \$950 per month).

128. This is because, theoretically, charging a lower hourly rate for guardianship services not paid through Medicaid makes it possible for those with fewer assets and/or lower income to pay for the services themselves. This means lower costs for the State. Such a public service should not be met with shifting the burden to practitioners to take significant pay cuts. After all, the market does not appear to be competing for rates this low, for the most part. *See generally* Ronnie Greene & Holly Barker, *Peter Max's Bare Ledgers Show Guardianships Drain Even the Rich*, BL (Mar. 9, 2023), <https://news.bloomberg.com/us-law-week/peter-maxs-bare-ledgers-show-guardianships-drain-even-the-rich> [<https://perma.cc/9V3E-HCCG>] (on file with author).

for guardianship fees, like Indiana, that established a uniform amount that can be deducted or disregarded regardless of the actual cost of services. An important consideration is looking at Indiana's sister state of Illinois' approach, which is similar to our own. The difference between the two states is that guardianship solely over the person in Illinois entitles the guardian to an amount approximately seven times greater than in Indiana. While Indiana need not adopt a statutory scheme as drastic in terms of the increase in fees, if Indiana prefers to stay with a fixed rate, it could find a middle ground between the Illinois example and what it currently is—\$35. It may not be ideal for keeping the budget low, but it is more commensurate with the value of services and more adequately compensates for much needed work.

Guardianship fees may go largely unnoticed because many of these cases are handled by the probate courts and do not receive much attention or public notoriety.¹²⁹ Debra Woods thinks that \$100 per month is a reasonable number.¹³⁰ This is the number that the legislature in Alaska has adopted for the maximum guardianship fee allowable under Medicaid.¹³¹ As previously stated, the Indiana General Assembly has attempted, without success, to pass legislation increasing the Medicaid reimbursement for guardianship fees to \$175 per month. One approach could be to meet in the middle at \$100 dollars instead of going as high as was suggested in SB 396. This would hopefully appease lawmakers and keep costs down, which is certainly always a concern of the legislature as they conduct a fiscal impact assessment with proposed bills. In fact, that is likely one of the reasons that the legislation has remained the same for the past few decades—an attempt at controlling costs.

One method of making this approach more palatable to the General Assembly would be to limit the organizations that can receive this fixed amount set-aside. Efforts to focus the increased amount of \$175, or an amount a little below that number, on certain organizations could increase the likelihood of the bill being passed into law. The concern in the past was the fiscal impact. Current proposals seem poised to achieve what the 2017 proposed Senate Bill could not by making the increased cap available to only VASIA programs and/or certified guardians in Indiana in hopes of reducing the fiscal impact on the State budget. This would help alleviate the concerns raised before, after the bill had passed unanimously through the Committee on Family and Children's Services but died in the Appropriations Committee. The current Indiana Administrative Code—specifically 405 Indiana Administrative Code 2-1.1-7—allows court ordered guardianship fees paid to an institutionalized Medicaid applicant or their legal guardian.¹³² This makes the fee available to individuals and groups that may not be recognized VASIA programs. Increasing the fees only for VASIA programs is appropriate given their level of expertise in the area and

129. Greene, *supra* note 5.

130. *Id.*

131. ALASKA ADMIN. CODE tit. 7, § 100.558(f)(6) (2025).

132. 405 IND. ADMIN. CODE 2-1.1-7 (2025).

still limits the costs for the State. It could be further limited to only certified guardians.¹³³

C. Reasonable Compensation

Many jurisdictions, such as Wisconsin, allow courts to determine the fees that a guardian is entitled to for their work on a case-by-case basis, but provide some guidelines for what is to be considered.¹³⁴ Indiana similarly allows for reasonable compensation for guardianship services, for those who are able to pay, by petitioning the court.¹³⁵ These are different than the Medicaid set-aside of \$35 for those who are unable to pay for guardianship services. These factors include: reasonableness of services rendered; fair market value of the services rendered; conflict of interest of the guardian; availability of another to provide the services; the value and/or nature of the ward's assets and income; whether the ward's basic needs are being met; and the hourly or other rate proposed by the guardian for their services.¹³⁶ Further, "[t]he amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances."¹³⁷ Not surprisingly, what goes along with these conditions is that the court must approve of the guardianship fees or compensation. What is different between this statutory scheme and that of Indiana currently is that Wisconsin law leaves the door open for a court to determine that guardianship services might be less some months than others as opposed to a flat rate—instead, it is variable. Notably, the Wisconsin statute does not award compensation via reimbursement through Medicaid.¹³⁸

Besides adopting similar approaches as other states in determining reasonable compensation, Indiana law could attempt to incorporate similar factors to attorney fee standards for determining what is a reasonable fee for legal services. In that context, the factors to be considered are: time and labor required (novelty or difficulty of issue), work load outside of that particular client, customary fee for those type of services in the particular locale, the amount involved and results obtained, time limitations imposed by the circumstances, nature and length of relationship with client, experience and ability of lawyer, and whether the fee is fixed or contingent.¹³⁹ These factors are

133. Greene, *supra* note 5 (currently, there is no certification requirement to be a guardian in the State of Indiana).

134. WIS. STAT. § 54.72(1)(c) (2025).

135. *See* IND. CODE ANN. § 29-3-9-3 (2024) ("A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for reasonable expenditures made in good faith on behalf of the protected person.").

136. WIS. STAT. § 54.72(1)(b) (2025).

137. WIS. STAT. § 54.72(1)(c) (2025).

138. *See* WIS. STAT. § 54.72 (2025).

139. MODEL RULES OF PRO. CONDUCT r. 1.5 (A.B.A. 2020), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_5_fees/ [<https://perma.cc/9PEX-6E7S>].

quite similar to those evaluated by courts making a guardianship fee determination in other jurisdictions. Most of them are relevant in the guardianship context as well. In light of the Debra Woods case study, evaluating one's caseload would appear to be an important factor to consider, if not just increasing the flat rate by explicit law. Fees ordinarily charged in similar situations would seemingly be common sense and without much disagreement. The amount of assets involved with the client and the case can make the work more complex and will require more time and effort, thus, the amount of assets involved, like the amount in controversy, should have a role in the determination of guardianship fees. The amount of work involved and required for each guardianship is another natural factor that should definitely be included. The nature and length of the relationship with the client may be relevant to the extent of the quality of care provided by the guardian in relation to the client and whether they are satisfied with the guardian's work can be very telling of their deservedness of guardianship fees. The experience of the guardian is also an important factor since more experienced guardians, like attorneys, should be entitled to higher compensation than those with less experience because they have built up wisdom through their years of practice. Finally, the type of fee arrangement (fixed, hourly, or contingent) is not as applicable in the guardianship context as it is for the typical practicing attorney.

D. National Guardianship Association (NGA) Standards

One consideration in determining reasonable fees could be compliance with guidelines and ethics. If a court is partaking in a reasonable compensation analysis, maybe it would be worthwhile to evaluate the guardian's actions not only for the quality of their work, but also their adherence to proper guardianship standards.¹⁴⁰ The National Guardianship Association Standards of Practice suggest that guardians are entitled to reasonable compensation. Specifically, "[a]ll fees related to the duties of the guardianship must be reviewed and approved by the court. Fees must be reasonable and be related only to guardianship duties."¹⁴¹ Guardians should support their fee request by considering:

- powers and responsibilities under the court appointment;
- necessity and quality of the services;
- the guardian's experience, skills, and licensure;
- the character and difficulty of the work to be done;
- the circumstances under which the work was done, i.e., emergencies;

140. See STANDARDS OF PRACTICE (NAT'L GUARDIANSHIP ASS'N, 5th ed. 2022), <https://www.guardianship.org/wp-content/uploads/NGA-Standards-2022.pdf> [<https://perma.cc/BSX8-KRLX>].

141. *Id.* at Standard No. 22.

- time expended;
- benefits of the services to the individual;
- fees customarily paid for like services; and
- the extent to which the services were consistent with the guardian's plan.¹⁴²

Further, the guardian should disclose a detailed explanation for the claim for fees, basis for fees, and a projection of annual fees within 90 days of appointment.¹⁴³ The fees or expenses should be documented similar to how a law firm bills its time—date and time spent on task, duty performed, expenses incurred, and who performed the duty.¹⁴⁴ Most importantly, in terms of avoiding the Debra Woods issue, the NGA guidelines instruct guardians to limit their caseload to a manageable amount that allows the guardian to adequately and accurately support the individual by at least one visit per month and regular contact with service providers.¹⁴⁵ The size of one's caseload must be analyzed based on an objective evaluation of the time required in each case, activities expected, and ancillary support available to the guardian.¹⁴⁶ These considerations determine the appropriate volume of cases for any one guardian or guardianship organization. The guidelines also instruct that a guardian shall actively pursue and facilitate periodic independent review of their services.¹⁴⁷ Including this factor as part of the law would increase oversight in addition to a court's review of services rendered for the purposes of guardianship fees.

The NGA standards are not binding on state or federal courts.¹⁴⁸ Additionally, no national bill of rights exists to protect the rights of those under guardianship.¹⁴⁹ Without any binding standards to hold guardians to, courts may rely on fees and review of services rendered by guardians as an appropriate oversight mechanism. This judicial oversight will act as an incentive to guardians to perform adequate services for their clients. Otherwise, as a means of keeping costs down, the legislature could simply fix the allowable guardianship fee set-aside at a higher amount. This would have the benefit of not wasting quite as many judicial resources but still encourage better work and more attention per client, keeping in mind the Debra Woods case study. Further,

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* at Standard No. 23.

146. *Id.*

147. *Id.* at Standard No. 24.

148. Hamre & Nord, *supra* note 4 at 1; Michael A. Kirtland, *Rights of Persons Under Guardianship*, ABA (Aug. 26, 2020), https://www.americanbar.org/groups/senior_lawyers/resources/voice-of-experience/2010-2022/rights-persons-under-guardianship/ (on file with author).

149. Though, there is a resident bill of rights for those in nursing homes. *See Your Rights and Protections as a Nursing Home Resident*, CTRS. FOR MEDICARE & MEDICAID, https://downloads.cms.gov/medicare/your_resident_rights_and_protections_section.pdf [<https://perma.cc/Y529-DXEJ>] (last visited Jan. 31, 2025); Hamre & Nord, *supra* note 4.

it would avoid taking other oversight measures to prevent fraud and abuse through guardianships. Some states have taken to requiring the appointment of an independent counsel to oversee the work of court-appointed guardians. In some cases, the independent legal counsel provides legal services to one under guardianship without any costs to the incapacitated individual.¹⁵⁰ Other states require that a guardian ad litem be appointed to represent the respondent (potential protected person) in the guardianship hearing as a representative of the court and to report their findings on the best interests of the respondent to the court.¹⁵¹ These are helpful measures to protect the guardian, but they may only be available to a small number of county court systems within the State and the greater issue at hand is reducing caseload to improve outcomes for protected persons under guardianship while adequately funding an area of increased importance. Stated differently, there are adequate ethical safeguards in place for bad actors, the issue is providing sufficient funding for enough personnel to address the burgeoning guardianship problem.

IV. CONCLUSION

It is difficult to demonstrate the enormous social benefits that guardianship organizations, specifically VASIA programs provide. This is because their benefit cannot always be quantified and there is very little data currently available measuring the amount of money paid by Medicaid for the care of individuals under adult guardianship. The only somewhat quantifiable measure of the impact of increasing guardianship fees is a rudimentary assessment conducted in the Indiana General Assembly's Ways and Means Committee that struck Senate Bill 396 down. That bill would have increased the allowable guardianship fee to \$175 per person per month. Instead, the fiscal impact statement dissuaded the committee's adoption of SB 396. Yes, the increase in guardianship fees would be substantial, but that should not be the end of the assessment, and a different approach could be taken that would have more success in the General Assembly. A middle ground limit of \$100 per month per protected person based on reasonable compensation could work. At the very least, data demonstrating the current fiscal impact based on the number of adults under guardianship or an attempt to show the benefits of VASIA programs or

150. Bloomberg Law had a series of articles detailing the issues dealt with in the guardianship system, with several focusing on issues of fraud and abuse. One article in the series addresses solutions to potential fraud and abuses by guardians. Nevada has taken the approach of instituting legal reform that eliminates unnecessary guardianships and aims to eliminate the fraud and abuses in the Bloomberg series. "Nevada in 2017 began requiring independent lawyers be assigned to represent adults whenever a petition for guardianship is filed. This legal help comes at no cost, much like in criminal cases where indigent defendants are guaranteed free counsel." Ronnie Greene, *Guardians' Abuses Persist as One State's Easy Fix Goes Unmatched*, BL (Mar. 10, 2023), <https://news.bloomberglaw.com/us-law-week/guardians-abuses-persist-as-one-states-easy-fix-goes-unmatched> [<https://perma.cc/2ZGL-9WFZ>].

151. FROLIK & BARNES, *supra* note 1, at 360.

relieving the burdens of government would be extremely helpful.

Until such data is available, logic and anecdotal evidence will have to suffice. Stories of fraud and mishandled guardianships suggest that the system in place is encouraging bad actors and poor work. This leads to resources being taken away from the State when not actually used to carry out guardianship services, but also worse health outcomes due to inattention to the needs of protected persons under guardianship. With such a low fixed amount allocated towards reimbursing guardians for their care of protected persons without the means to pay, guardians are incentivized to take on too many clients. The number of incapacitated people with a court-appointed guardian who can pay the guardianship fees is relatively small.

Consequently, court-appointed guardians logically have to take on several clients in order to make anything close to reasonable revenue, even if they do receive a grant from the State. With the growing population of older individuals and those with a serious mental illness, the need for guardianship services is inevitably going to be in high demand. In order to address this impending issue, Indiana should consider the approaches outlined above. These include: increasing the fixed rate to a number between \$35 and \$175, making the fees subject to “reasonable compensation” like for those who have the ability to pay guardianship fees, adopting the NGA standards, and limitation of a higher guardianship fee to certified VASIA programs. State budgets may be strained, but the capacity of guardianship organizations is significantly strained as well. The grants made by the State to guardianship organizations are remarkably beneficial and recognize the need for this kind of work. However, the grants will not likely be able to keep up with the proportion of demand in certain counties and there will not be enough to go around.

Of course, the fiscal impact should be a large consideration, but it should be balanced with the quality of work and health outcomes. With the growing prevalence of societal issues that necessitate guardianship, the State would greatly benefit from more coordinated and experienced management of vulnerable individuals’ assets and medical care. What politicians care about is the perception of a crisis among their population, like homelessness, people being unable to receive medical care, or mental health issues. That storm is going to hit hard in the coming years, and it is only going to become more noticeable, especially in the age of technology, where incapacitated individuals are increasingly falling prey to online scams.¹⁵² More importantly, these demographics have been neglected, ignored, and not taken seriously in terms of their care.

Improving access to guardianships will have related improvements in health outcomes by ensuring protected persons are getting proper treatment and experience greater overall stability and happiness, thereby improving their quality of life. Additionally, improved access to guardianships will help

152. See e.g., *Leitner v. Leitner (In re Leitner)*, No. A-11-191, 2012 Neb. App. LEXIS 29 (Neb. Ct. App. Feb. 14, 2012); FROLIK & BARNES, *supra* note 1, at 377–80.

protected persons manage their assets more effectively, which would likely protect creditors and family members by reducing waste and ensuring that obligations are honored. The State of Indiana should reward and encourage the public good that guardianship organizations provide in addressing societal problems, take a proactive approach to dealing with a growing issue, and improve the health (physical, mental, and financial) of its citizens. If there is no money in this work, recruitment of personnel will be difficult, and may even force good guardians to leave the profession. While guardianship is meant to be a benevolent act as opposed to a business,¹⁵³ there still has to be some money supporting this public good. The State has the responsibility of taking care of protected persons through the philosophy of *parens patriae*. To properly carry out this duty, guardianship should be supported with adequate funding.

153. Greene & Barker, *supra* note 106.