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TO: Hon. Eric Coleman, Co-Chair, Judiciary Committee
Hon. William Tong, Co-Chair Judiciary Committee
Hon. John Kissel, Ranking Member, Judiciary Committee
Hon. Rosa Rebimbas, Ranking Member, Judiciary Committee
Honorable Members of the Judiciary Committee

FROM: Paul J. Knierim
Probate Court Administrator

RE: Proposed Amendment to Probate Court Regulations, Section 16

DATE: February 19, 2016

CC: Hon. Patrick L. Carroll, III, Chief Court Administrator
Hon. Sydney W. Elkin, President - Judge, Connecticut Probate
Assembly

In accordance with C.G.S. section 45a-77 (b) (1), I respectfully request the Judiciary Committee's approval of the enclosed proposed amendment to section 16 of the Probate Court Regulations. The regulation governs the compensation of conservators appointed on behalf of indigent conserved persons.

The Probate Assembly's Executive Committee approved the proposed regulation on February 10, 2016. The proposal is posted on our website at www.ctprobate.gov.

Please feel free to contact me or Vincent Russo, legislative liaison, with any questions.

Enclosure (1)

Section 16 of the Probate Court regulations is amended as follows (*Effective 90 days after submission to the Judiciary Committee*):

Section 16

Compensation of Conservator if Person under Conservatorship is Unable to Pay

16.1 Authority

These regulations are issued in accordance with C.G.S. section 45a-663.

16.2 Definitions

For purposes of [P.C.R.] regulation section 16:

(a) "Person under conservatorship" means a conserved person [under conservatorship] as defined under C.G.S. section 45a-644 (h) or a person under voluntary representation under C.G.S. section 45a-646.

(b) A person under conservatorship shall be considered "unable to pay" if the court has granted [a] the person's request for a fee waiver unless the person's counted assets exceed the maximum to be eligible for medical assistance ("Medicaid") under the provisions of Title XIX of the Social Security Act, 45 U.S.C. section 1396 et seq., C.G.S. section 17b-261, and section 4005.10 of the Department of Social Services Uniform Policy Manual.

(c) "Psychiatric disability" means a diagnosed mental illness of a severe and persistent nature, but does not include dementia or intellectual disability.

[16.3 Compensation of conservator if person under conservatorship is unable to pay

(a) Except as provided in P.C.R. sections 16.3 (c), 16.3 (d) and 16.4, if a person under conservatorship is unable to pay for the services of a conservator, the court shall determine the reasonable compensation of the conservator in accordance with P.C.R. section 16.3 (b) and procedures established by the

administrator. The compensation of the conservator shall be paid from the administration fund.

(b) The maximum rate of compensation for a conservator of a person under conservatorship who is unable to pay shall be \$50 per hour. The maximum amount of compensation per case shall not exceed the applicable amount set forth below unless the court determines that the conservator should be compensated for time expended in excess of the maximum amount due to extraordinary circumstances:

- (1) For a conservator of the person of a person who is not residing in a convalescent facility, hospital or other similar institution, a maximum of \$1,000 during the first six (6) month period of service and a maximum of \$500 per year thereafter.
- (2) For a conservator of the person of a person who is residing in a convalescent facility, hospital, or other similar institution, a maximum of \$500 for the first six (6) month period of service and a maximum of \$250 per year thereafter.
- (3) For a conservator of the person of a person who has a psychiatric disability, a maximum of \$1,000 during the first six (6) month period of service and \$1,000 per year thereafter.
- (4) For a conservator of the estate who prepares an application for benefits under Title XIX and supervises the liquidation of the person's assets, \$500, in addition to any compensation for services as conservator of the person. While the application is pending or after the application has been granted and subject to approval of the Department of Social Services, the court may order payment of the compensation from the person's assets rather than from the administration fund. A conservator of the estate of a person currently receiving Title XIX assistance is not

eligible for compensation from the administration fund without the prior approval of the appointing court and the administrator.

(c) A spouse, parent, child, grandchild or sibling of the person under conservatorship shall not be eligible for compensation under P.C.R. section 16.

(d) P.C.R. section 16 does not apply if the court has appointed the Commissioner of Social Services as conservator under C.G.S. section 45a-651.

(e) A conservator shall submit invoices for compensation under this section no later than six (6) months after the date the service was rendered. The administrator shall not pay the portion of any invoice that covers services rendered more than six (6) months before submission of the invoice to the court.

(f) Payment is subject to availability of funds as budgeted and approved by the administrator each fiscal year.

16.4 Alternative funding arrangement for conservatorship program for persons with serious and persistent psychiatric disorders

The administrator may contract with one or more organizations to develop and maintain a program to serve as conservator for persons with serious and persistent psychiatric disorders who are unable to pay for the services of a conservator. The contract shall establish the annual amount of funding for the program.]

16.3 Applicability

(a) This regulation applies to the compensation of a conservator for a person under conservatorship who is unable to pay for the services of the conservator.

(b) This regulation does not govern the compensation of:

(1) a conservator who is paid from the resources of the conserved person; or

(2) the Commissioner of Social Services when serving as a conservator under C.G.S. section 45a-651.

(c) A conservator who is related to the person under conservatorship by blood or marriage shall not be eligible for compensation under this regulation.

(d) A conservator of the estate shall not be eligible for compensation under this regulation if the person under conservatorship has been determined to be eligible for Medicaid and the requirements of any spend-down plan have been satisfied and:

(1) the person resides in a nursing home, hospital or similar facility; or

(2) the financial management needs of the person can be met by a representative payee designated by the Social Security Administration.

16.4 Compensation of conservator if person under conservatorship is unable to pay

(a) Except as provided in section 16.3 and subject to the availability of budgeted funds, the compensation of a conservator for a person who is unable to pay shall be determined in accordance with this regulation and policies and procedures established by the administrator. The compensation of the conservator shall be paid from the administration fund.

(b) The hourly rate for time expended by the conservator on compensable activities set forth in section 16.5 is \$50.

(c) A conservator shall be eligible for additional compensation for time expended by an employee of the conservator acting under the conservator's direct supervision. The hourly rate for time expended by an employee of the conservator on compensable activities set forth in section 16.5 is \$25.

16.5 Compensable Activities

(a) A conservator shall be eligible for compensation under this regulation for time expended on behalf of the person under conservatorship on the following activities:

- (1) Making decisions about medical and personal care;
- (2) Arranging and supervising services;
- (3) Arranging procurement of necessities such as food and medication;
- (4) Meeting and communicating with the person under conservatorship and third parties, such as family members, medical providers, facility staff, financial institution staff, professional advisers and other service providers, in connection with making decisions and arranging and supervising services;
- (5) Obtaining public assistance and benefits;
- (6) Managing mail;
- (7) Preparing for and attending hearings and conferences in Probate Court, including the preparation of petitions, motions and annual reports;
- (8) Managing records;
- (9) Handling emergency situations; and
- (10) Except as provided in sections 16.3 (d) and 16.6:
 - (A) Applying for Medicaid and executing a spend-down plan;
 - (B) Managing income and assets;
 - (C) Paying bills;
 - (D) Banking;
 - (E) Reconciling bank statements;
 - (F) Bookkeeping;
 - (G) Preparing financial reports and accounts; and
 - (H) Preparing tax returns.

(b) A conservator shall not be eligible for compensation for activities that fall outside the authority set forth in the decree appointing the conservator.

(c) A conservator shall not be eligible for compensation for time expended on the following activities:

- (1) Shopping;
- (2) Delivering goods;
- (3) Delivering a cash allowance, unless there is no other practical alternative;
- (4) Travelling to the bank to make deposits of regular income sources for which direct deposit is available;
- (5) Providing transportation;
- (6) Providing companionship;
- (7) Acting as attorney for the person under conservatorship;
- (8) Performing home maintenance and improvement activities;
- (9) Moving furniture and possessions, except as necessary to safeguard items of significant value;
- (10) Caring for pets, except that the conservator may arrange for care on a temporary basis if the person under conservatorship is unable;
- (11) Timekeeping and billing activities, including preparation of invoices, motions for approval and task statements and attendance at hearings concerning conservator fees; and
- (12) Activities of a purely secretarial nature, including typing, photocopying, mailing, faxing and filing.

(d) A conservator is eligible for compensation under this regulation in connection with legal matters outside the conservatorship proceedings, including proceedings in other courts, that affect the interests of the person under conservatorship, provided that the conservator's time is limited to making decisions about the person's position on the matter and strategy to advance that position. No compensation shall be paid to a conservator who is an attorney for legal services provided to the person under conservatorship in connection with such matters.

(e) A conservator is eligible for compensation for time expended traveling to and from the conservator's place of business in connection with compensable activities. Time for travel to and from the conservator's residence is not compensable unless the residence is the conservator's sole place of business. Travel expenses such as mileage, parking and tolls are not eligible for reimbursement.

(f) After the death of the person under conservatorship, compensation of the conservator shall be limited to the following activities and shall be paid from the administration fund only to the extent that the assets of the person under conservatorship are insufficient:

- (1) Paying funeral expenses, administration expenses and claims, if permitted under C.G.S. section 45a-597; and
- (2) Preparing a final financial report or account and attending court hearings regarding the report or account.

16.6 Use of Funds during Medicaid Spend-down

Notwithstanding a determination by the court that the person under conservatorship is entitled to a fee waiver, if a conservator reasonably anticipates that the person under conservatorship will become eligible for Medicaid within the succeeding twelve months, the conservator shall, to the maximum extent possible, pay the compensation of the conservator and other administration expenses from the person's income and assets. The compensation of the conservator shall be subject to court approval.

16.7 Invoicing

(a) A conservator shall submit each invoice for compensation under this regulation to the appointing court in accordance with procedures established by the administrator.

(b) Each invoice shall document time expended in increments of one-tenth

of an hour and shall identify the person performing the service and briefly describe the activity for each entry.

(c) The deadline for submission of an invoice to the court shall be six months from the date of the activity. The administrator shall not pay the portion of any invoice that covers activity more than six months before submission of the invoice to the court.

16.8 Review and Approval of Invoices

(a) The court shall review each invoice submitted by a conservator. The court shall forward the invoice to the administrator for payment if in the opinion of the court the compensation sought complies with the provisions of this regulation. The court shall reject or reduce any entry that is not in compliance with this regulation.

(b) Except as set forth in section 16.8 (c), the maximum amount of compensation per case shall not exceed the amount set forth below:

(1) For a conserved person who is not residing in a nursing home, hospital or similar facility, a maximum of \$1,000 during the first six month period of service and a maximum of \$500 per year thereafter;

(2) For a conserved person who is residing in a nursing home, hospital or similar facility, a maximum of \$500 for the first six month period of service and a maximum of \$250 per year thereafter; and

(3) For a conserved person who has a psychiatric disability, a maximum of \$1,000 during the first six month period of service and \$1,000 per year thereafter.

(c) On request of a conservator, the court may authorize payment in excess of the maximum amounts set forth in section 16.8 (b) if the court is of the

opinion that the conservator used the most efficient method available to perform each activity for which compensation is sought. The court shall reject or reduce any entry if it determines that the time was not expended in the most efficient manner available.

(d) Upon receipt of an invoice from a court, the administrator shall process the invoice for payment in accordance with the court's approval, except that the administrator shall reject or reduce any entry that is not in compliance with this regulation and shall reject or reduce any entry in excess of the maximum set forth in section 16.8 (b) upon determining that the time was not expended in the most efficient manner available. The administrator shall inform the conservator, in writing, of any entries that are rejected or reduced.

16.9 Alternative funding arrangement for conservatorship program established by organization

The administrator may contract with one or more organizations to develop and maintain a program to serve as conservator for persons who are unable to pay for the services of a conservator. The contract shall establish the method by which the organization will be compensated for serving as conservator, which may differ from the provisions of this regulation.

16.10 Workload of conservator

(a) When considering whether to appoint an individual as conservator, the court shall consider whether the individual has sufficient time available in his or her schedule to properly perform the duties of the role in light of his or her other commitments, including other conservatorship appointments.

(b) The administrator shall maintain a list of individuals who are currently receiving compensation from the administration fund for services as conservator, which list shall indicate the number of cases each individual is currently handling. The administrator shall make the list available to the courts.