

STATE OF NEVADA



STEVE SISOLAK
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

MICHAEL BROWN
Director

MARY YOUNG
Interim Commissioner

October 3, 2019

Melissa McGovern, President
Senior Solutions Group, Inc.
4760 S. Pecos Road, Suite 103
Las Vegas, Nevada 89121

RE: **NRS 628B- Hourly Billing Requirements - Advisory Opinion Request April 30, 2019**

Dear Ms. McGovern:

The State of Nevada Financial Institutions Division (“NFID”) received your petition for the issuance of an advisory opinion, pursuant to NAC 232.040, concerning the hourly billing requirements under Nevada Revised Statutes (“NRS”) and Nevada Administrative Code (“NAC”) Chapter 628B. The opinion has been requested on behalf of Senior Solutions Group, Inc. (“Licensee”).

Facts

NRS 628B and NAC 628B grants the authority to the NFID to license and regulate Private Professional Guardian Companies (“PPG”).

Court orders are obtained by the Licensee to allow payment for guardianship services rendered. Typically, the orders allow the Licensee to bill on an hourly basis for such services. The Licensee is required to submit all bills to the court for review and approval by the case judge and the protected person’s attorney.

The opinion request states that the Licensee “does not track its billable hours by actual time because there is nothing in the statute that requires them to do so.” It further states “that minute-by-minute reporting might be easier for a new startup guardianship company with one guardian and a few clients, but it is not feasible for a large guardianship company with numerous clients.” The Licensee further stated that “it would be a burdensome task to change the systems they currently have in place in order to start tracking its billable hours by actual time.”

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Issue Presented

Whether the Licensee or any licensed PPG is required to record its billable hours with a beginning and ending time.

Analysis

In 2015, the Legislature found and declared that there exists in this State a need, in order to protect the public interest, to regulate entities engaged in the business of private professional guardians and persons employed by such entities. As such, the authority was granted to NFID to license and regulate PPG activity in such a manner as to promote advantages and convenience for the public while protecting the public interest¹.

NRS 628B.560(1)² states, in part, each guardianship account must at all times account for all money received for the benefit of the protected person and account for all money dispersed for the benefit of the protected person, and no disbursement may be made from the account except as authorized under chapter 159 or 159A of NRS or *as authorized by court order*. (Emphasis added).

NRS 628B.560(2)² further states, in part, each private professional guardian company shall keep a record of all money deposited in each guardianship account maintained for a protected person, which must clearly indicate the date and from whom the money was received, the date the money was deposited, the dates of withdrawals of money and *other pertinent information concerning the transactions*. (Emphasis added).

The National Guardianship Association (“NGA”) issued “Standards of Practice” and “Agency Standards”. Standards of Practice- Standard 22- Guardianship Service Fees- states “Factors to be considered in determining reasonableness of the guardian’s fees include the character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken; the fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter; and the work actually performed, *including the time actually expended*³...” (Emphasis added).

NGA Standard 22 further states that fees and expenses charged by the guardian shall be documented through billings maintained by the guardian. If time records are maintained, they shall clearly and accurately state:

- A. Date and *time* spent on a task, (Emphasis added)
- B. Duty performed,
- C. Expenses incurred,
- D. Collateral contacts involved, and
- E. Identification of individual who performed the duty (e.g., guardian, staff, volunteer).

¹NRS 628B.010 Legislative findings and declarations. The Legislature finds and declares that: 1. There exists in this State a need, in order to provide for the protection of the public interest, to regulate entities engaged in the business of private professional guardians and persons employed by such entities. 2. Entities engaging in the business of private professional guardians must be licensed and regulated in such a manner as to promote advantages and convenience for the public while protecting the public interest. 3. It is the purpose of this chapter to bring under public supervision entities that are engaged in or desire to engage in the business of a private professional guardian and to ensure that there is established in this State an adequate, efficient and competitive private professional guardian service available to the courts and the public at large.

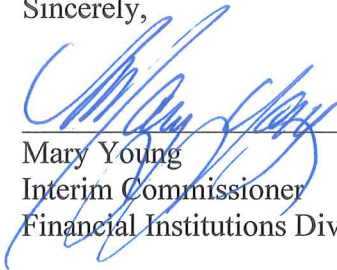
Furthermore, NGA Standards for Agencies Intent Statement states “Guardianship is a fiduciary relationship and fees for service should be open to scrutiny by the court or other government entities in a position of oversight of the agency or program, as well as to the public. Whether the agency is a public entity or a private one, the fiduciary nature of guardianship also requires that fees be reasonable for services rendered. To avoid the appearance of impropriety and any conflict of interest, the agency/program’s policies concerning fees/funding must be consistent with the NGA Standards of Practice and be clear and open to public scrutiny.” (Emphasis added)

Authorization by court order is granted to the Licensee to allow payment for guardianship services rendered. The court order usually allows the Licensee to bill on an hourly basis for such services. Both NRS 628B and NGA Standards require fees based upon reasonable standard. However, without clearly identifying the period of time spent on each task for a client, it is impossible for NFID to determine if fees are reasonable and in compliance with court order, and the time allocated is appropriate. Additionally, proper billing procedures should be established to ensure NFID can determine what task was completed for whom, and the amount of time expended.

Conclusion

In order to comply with a court order and NRS Chapter 628B, and in accordance with the spirit and intent of NRS Chapter 628B, the Licensee must maintain all records concerning each protected person, including an accurate record of billable time. An accurate record consists of a beginning and ending time of the billable activity. This will allow the NFID and the court to accurately review the sequence of events on a particular day to ensure the Licensee is acting in the best interest of a protected person at a particular time. Time cannot be accurately measured without the beginning and ending time of any activity for each protected person.

Sincerely,



Mary Young
Interim Commissioner
Financial Institutions Division

²NRS 628B.560 Requirements for guardianship accounts for protected persons; recordkeeping requirements; examination of records and accounts by Commissioner; authority of Commissioner to require submission of audited financial statement and to issue subpoenas; fee for examination. 1. Except as otherwise provided in NRS 159.076 and 159A.076 a private professional guardian company shall maintain a separate guardianship account for each protected person into which all money received for the benefit of the protected person must be deposited, unless otherwise ordered by the court for a substantiated reason. Each guardianship account must be maintained in an insured bank or credit union located in this State, be held in a name which is sufficient to distinguish it from the personal or general checking account of the private professional guardian company and be designated as a guardianship account. Each guardianship account must at all times account for all money received for the benefit of the protected person and account for all money dispersed for the benefit of the protected person, and no disbursement may be made from the account except as authorized under chapter 159 or 159A of NRS or as authorized by court order. 2. Each private professional guardian company shall keep a record of all money deposited in each guardianship account maintained for a protected person, which must clearly indicate the date and from whom the money was received, the date the money was deposited, the dates of withdrawals of money and other pertinent information concerning the transactions. Records kept pursuant to this subsection must be maintained for at least 6 years after the completion of the last transaction concerning the account. The records must be maintained at the premises in this State at which the private professional guardian company is authorized to conduct business.

³VII. Factors to be considered in determining reasonableness of the guardian's fees include: E. the character of the work to be done, including difficulty, intricacy, importance, time, skill, or license required, or responsibility undertaken G. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have rendered the service better, cheaper, faster; J. the fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter.