



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Rehabilitation Services TITLE-SERIES: 198-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 198-01 Ron Yost Personal Assistance Services Act Board

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §18-10L-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

WVC §18-10L-6 grants the Division of Rehabilitation Services the authority to propose rules necessary for the administration of the program. The proposed change will make the rule consistent with changes to WVC §18-10L-5 that were made during the 2020 legislative session to allow for the program's funds to be utilized to pay for mandated functional assessments which are used to determine program eligibility.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 7/24/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 8/26/2020

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

The proposed revision was shared with all stakeholders and available on the agency's website for public comment.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The revision to the Legislative Rule, Title 198, Series 1, Ron Yost Personal Assistance Services Act is necessary to allow the costs for required functional assessments to determine program eligibility to be paid for from the Ron Yost Personal Assistance Services Fund.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This revision is consistent with changes made to West Virginia Code §18-10L-5 during the 2020 Regular Session of West Virginia Legislature. Those changes also permit funds dedicated for the Ron Yost Personal Assistance Services program to be utilized for functional assessment costs.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The changes are revenue and cost neutral.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The changes are revenue and cost neutral.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The changes are revenue and cost neutral.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The changes are revenue and cost neutral.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Tracy J Carr -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 198
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES

SERIES 1
RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD

§198-1-1. General.

1.1. Scope. -- This rule is being filed pursuant to W. Va. Code §29A-3-1 et seq. and 18-10L-6. This rule establishes procedures and standards applicable to the implementation of the Ron Yost Personal Assistance Services Act.

1.2. Authority. -- W. Va. Code §18-10L-6.

1.3. Filing Date. -- ~~April 9, 2014.~~

1.4. Effective Date. -- ~~May 9, 2014.~~

1.5. Sunset Provision. -- This rule will terminate and have no further force or effect upon the expiration of five years from its effective date.

§198-1-2. Definitions.

2.1. "Board" -- means the Ron Yost Personal Assistance Services Board.

2.2. "Council" -- means the West Virginia Statewide Independent Living Council.

2.3. "Unobligated funds" -- means monies appropriated to the Ron Yost Personal Assistance Services Fund that remain uncommitted.

§198-1-3. Description of Program.

3.1. General Purpose. The West Virginia Legislature created and established the Ron Yost Personal Assistance Services Act to make available personal assistance services for persons with severe disabilities to enable them to live in their own homes and communities in lieu of more restrictive settings. Recipients of personal assistance services are able to make decisions regarding the provision of services including, but not limited to, hiring, training, managing, paying, and terminating an assistant's employment.

§198-1-4. Board Membership, Length of Terms, Attendance, Officers, Expenses, and Meetings.

4.1. Board Membership. The Council shall establish a standing committee to function as the consumer-directed Board to direct the implementation of the provisions of this rule.

4.1.a. The Board shall be composed of seven individuals with severe disabilities one of whom shall be a representative of the Council with a disability.

4.1.a.1. In addition to the persons named in subdivision 4.1.a. of this rule, the executive director of the Council and the director of the Division of Rehabilitation Services or his or her designee shall serve as ex officio, non-voting members. The Council may appoint additional ex-officio, non-voting members as needed.

4.1.b. The Council shall solicit Board members from across the state using a variety of methods; including newspaper ads, personal solicitations, etc.

4.1.c. The executive committee of the Council shall make the final determination of Board membership.

4.2. Members shall serve for terms of three (3) years.

4.2.a. With the exception of the Council member as described in subdivision 4.2.b. of this rule, no member may serve more than two consecutive full three-year terms;

4.2.b. The Council representative serves at the will and pleasure of the Council executive committee.

4.3. The Board shall meet at least four times a year.

4.3.a. The Board shall appoint committees, as needed, in the conduct of its business.

4.3.b. A quorum of the Board is constituted by at least four voting members being present, at least one of whom shall be an officer.

4.3.c. The Board shall elect from among its voting membership, as officers, a chairperson, a vice-chairperson, and a secretary at the October meeting of the Board.

4.3.c.1. Officers shall serve one-year terms, with a maximum of two consecutive terms.

4.4. Members of the Board shall receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties as members of the Board in accordance with state travel regulations. Members with disabilities may receive reimbursement for expenses including costs associated with personal assistance, interpreters and disability-related accommodations when those costs are incurred in the course of conducting the business of the Board. The Council's executive committee shall designate a Council member to serve as signatory, who shall authorize any reimbursement and shall pay members from the Ron Yost Personal Assistance Services Fund.

4.5. The Council's executive committee shall remove Board members who are absent from more than 50% of regularly scheduled meetings in a calendar year.

4.5.a. The Council executive committee shall appoint replacements to fill any vacancies. Appointment to an unexpired term does not preclude a person from serving two full three-year terms.

§198-1-5. Program.

5.1. Application for Services. To apply for personal assistance services, a person shall submit an application to the Board. The Board shall make a preliminary eligibility determination based upon the program requirements for eligibility contained in W. Va. Code 18-10L-4 (a). Once this preliminary assessment is made, the Board shall schedule a functional assessment of the applicant with a Board approved provider within 30 days unless there are no unobligated funds available.

5.1.a. The Board-approved provider shall provide the Board a copy of the functional assessment within seven (7) calendar days of the assessment

5.2. Once the functional assessment is obtained, the Board shall review the application.

5.2.a. The Board shall review applications within 30 days of the functional assessment, unless there are no unobligated funds available.

5.2.b. If there are no unobligated funds available, the Board shall review applications at the next regularly scheduled meeting of the Board.

5.3. The Board shall review applications using the following priorities:

5.3.a. To provide services to a person who would be placed in an institutional setting not of his or her choice if he or she did not receive services under this program;

5.3.b. To provide services to a person who would be able to leave an institutional setting and live in his or her own community in a setting of his or her own choice if he or she received services under this program; and

5.3.c. To award money for services under this program to all other applicants on a first come, first served basis.

5.4. Once a person is determined eligible for services, the Board shall contact the recipient of services in writing. The written notification shall include:

5.4.a. The number of hours the person is eligible to receive personal assistance services based on the functional assessment and the availability of funds;

5.4.b. The approved start date for these services;

5.4.c. Any training the recipient may need in order to manage a personal assistant; and

5.4.d. The rate at which the recipient is to be reimbursed.

5.5. The recipient shall agree to apply for and accept personal assistance services from Medicaid, if determined eligible.

5.5.a. A recipient remains eligible for services under this program until he or she begins receiving services from Medicaid.

5.6. If there are no unobligated funds available, the Board shall establish a waiting list of those persons eligible for services.

§198-1-6. Appeals.

6.1. If a person disagrees with a decision of the Board regarding eligibility or the parameters of services approved, he or she may appeal the decision to the Council executive committee in writing, within 30 (thirty) days of receipt of written notification.

6.1.a. The executive committee shall hear and review the appeal within 10 (ten) working days of receipt of the written appeal.

6.1.b. The executive committee shall send its written decision to the appellant within 5 (five) working days of the decision.

6.1.c. The decision of the executive committee is final.

§198-1-7. Funding.

7.1. Five (5%) percent of the funds allocated by the legislature will be designated for the Board to use for administrative costs. The Division of Rehabilitation Services or its contracted administrator may use another two (2%) percent of the funds for administration of the program; for a total of seven (7%) percent administrative costs.

7.2. ~~The West Virginia Division of Rehabilitation Services shall not receive any reimbursement from the fund established under this rule in order to complete the functional assessment. The costs of completing the functional assessments may be paid from the Ron Yost Personal Assistance Services Fund.~~

7.3. The program shall function within a budget developed and approved by the Board provided the budget is consistent with the requirements of W. Va. Code §18-10L-1 et seq. and this legislative rule.

§198-1-8. Sliding Scale.

8.1. The Board shall determine the level of financial assistance to an applicant, in part, based on the applicant's adjusted annual income at the time of the review. The Board shall review this information on a yearly basis.

8.1.a. The applicant's adjusted annual income shall be determined by calculating the applicant's annual net earned income and subtracting any allowable deductions. Only the applicant's income shall be considered: neither the applicant's other financial assets nor the income or assets of his or her family, if any, shall be considered. Earned income includes all money received for personal services, such as wages, salaries, tips, commissions, and fees. Funds received by the applicant from Workers' or Unemployment Compensation, a pension, SSDI, SSI, alimony, child support, and other sources shall be entered into calculated total income.

8.1.b. Deductions:

8.1.b.1. The total annual income shall be reduced by the annual amount of all non-elective withholdings other than garnishments, and by the amount of any elective withholdings for medical or hospitalization premiums. Non-elective withholdings are those which are not at the discretion of the wage earner. Garnishments are payments of private debts and therefore are considered as net income.

8.1.b.2. The applicant's total annual earned income shall be reduced by \$3,000 for the first dependent (not including the applicant), \$2,000 for the second dependent, and \$1,000 for each dependent thereafter. Each dependent claimed shall qualify as a dependent under the United States Internal Revenue Service code; except that a family member with gross earned income exceeding \$7,500 annually shall not be considered as being dependent upon the applicant.

8.1.b.3. The applicant's total annual earned income shall be reduced by the amount of the applicant's necessary expenses related to the disability, if any. These expenses may include annual costs for medication, medical supplies, adaptive clothing, and similar expenses. Non-expendable items such as wheelchairs, braces, van modifications, lifts, ramps, etc., shall be depreciated at a rate of 25% per year based on original purchase costs, except those items having an original purchase cost of \$1,500 or less may be claimed in a single year at the applicant's election. Only that portion of a disability-related expense not reimbursed by any third-party may be claimed.

8.2. Reimbursement Rate Schedule:

Income Reimbursement Category	Adjusted Annual Income	Reimbursement Percentage
1	\$ 0 - 21,999	100
2	22,000 - 22,999	98
3	23,000 - 23,999	96
4	24,000 - 24,999	94
5	25,000 - 25,999	92
6	26,000 - 26,999	90
7	27,000 - 27,999	88
8	28,000 - 28,999	85
9	29,000 - 29,999	81
10	30,000 - 30,999	76
11	31,000 - 31,999	70
12	32,000 - 32,999	63
13	33,000 - 33,999	55
14	34,000 - 34,999	46
15	35,000 - 35,999	36
16	36,000 - 36,999	25
17	37,000 - 37,999	13
18	38,000+	00