

**TITLE 198
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**

**SERIES 1
RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD**

Brief Summary

The Legislative Rule, Title 198, Series 1, Ron Yost Personal Assistance Services Act, is being amended to make this rule consistent with the revised Ron Yost Personal Assistance Services Act. The first amendment to the rule clarifies that applications for personal assistance services must be submitted to the Ron Yost Personal Assistance Services Board and that the board will make a preliminary determination of eligibility based upon the program requirements as defined in the West Virginia Code. The second amendment changes the language relating to appeals allowing individuals to appeal decisions of the board or parameters of services. The third amendment requires the program to function within a budget developed by the board and within the requirements of the West Virginia Code. Other amendments to this rule are primarily technical cleanup.



**BOB WISE
GOVERNOR**

**STATE OF WEST VIRGINIA
DEPARTMENT OF EDUCATION AND THE ARTS
OFFICE OF THE CABINET SECRETARY
STATE CAPITOL BUILDING 5, ROOM 205
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305**

**KAY GOODWIN
CABINET SECRETARY**

January 12, 2005

Judy Cooper, Team Leader
Administrative Law Division
Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0770

Dear Ms. Cooper:

With this letter, I am granting approval to the Division of Rehabilitation Services to file the following legislative rule with the Office of the Secretary of State for public comment:

Ron Yost Personal Assistance Services Act Board
Title 198
Series 1.

Sincerely,

A handwritten signature in cursive script that reads "Kay Goodwin".

Kay Goodwin
Cabinet Secretary

cc: Janice Holland, Interim Director, WV Division of Rehabilitation Services
Tracy Carr, Senior Manager, State and Federal Relations, WV Division of Rehabilitation Services

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LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF REHABILITATION SERVICES

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SERIES 1
RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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. -- .

1.4. Effective Date. -- .

§198-1-2. Description of Program.

2.1. 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.

§198-1-3. Board Membership, Length of Terms, Attendance, Officers, Expenses, and Meetings.

3.1. Board Membership. The West Virginia Statewide Independent Living Council (SILC) shall establish a standing committee to function as the consumer directed board to direct the implementation of the provisions of this rule.

3.1.a. The board shall be composed of seven individuals with severe disabilities one of whom shall be a representative of the SILC with a disability.

3.1.a.1. Two ex-officio, non-voting members, in addition to the individuals named in subdivision 3.1.a., shall be the executive director of the SILC and the director of the Division of Rehabilitation Services or his or her designee ~~the administrator responsible for the program~~. The SILC may appoint additional ex-officio, non-voting members as needed.

3.1.b. The council shall solicit board members from across the state using a variety of methods; including newspaper ads, personal solicitations, etc.

3.1.c. The executive committee of the council shall make the final determination of board membership.

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

3.2.a. With the exception of the SILC member as described in subdivision 3.2.c. of this rule no member

may serve more than two consecutive full three-year terms;

3.2.b. Initial appointments to the board shall be staggered as follows:

3.2.b.1. two members shall be appointed for a term of one year,

3.2.b.2. two members shall be appointed for a term of two years,

3.2.b.3. two members shall be appointed for a term of three years.

3.2.c. The SILC representative is limited in terms only by his or her SILC membership term and at the discretion of the SILC executive committee.

3.3. The board shall meet at least four times a year.

3.3.a. The board shall appoint committees as needed in the conduct of its business.

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

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

3.3.c.1. Officers shall serve one year terms with a maximum of two consecutive terms.

3.4. 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. Any reimbursement shall be authorized by the SILC chairperson and shall be paid from moneys allocated each year by the legislature.

3.5. Board members who are absent from more than ~~two~~ 50% of regularly scheduled meetings in a calendar year shall be removed from the board by the SILC executive committee.

3.5.a. The SILC executive committee shall appoint replacements to fill any vacancies.

§198-1-4. Program.

4.1. Application for Services. To apply for personal assistance services a person shall submit an application to the Ron Yost Personal Assistance Services Board West Virginia Division of Rehabilitation Services. ~~The board Division of Rehabilitation Services rehabilitation counselor~~ shall make a preliminary eligibility determination based upon the program requirements for eligibility as described under program requirements in W. Va. Code 18-10L-4 (a) the definition of Recipient or Consumer as described under definitions in W. Va. Code 18-10L-3(3). Once this preliminary assessment is made, the board counselor shall schedule a functional assessment of the applicant with a certified board approved provider within 30 days.

4.1.a. The certified board approved provider shall provide the board a copy of the functional assessment within seven (7) calendar days of the assessment

4.2. Once the functional assessment is obtained, the ~~Consumer directed~~ board shall review the application.

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

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

4.3. The board shall review applications using the following priorities:

4.3.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; and

4.3.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

4.3.c. ~~To The board shall~~ award money for services under this program to all other applicants on a first come, first served basis.

4.4. Once a person is determined eligible for services, the board shall contact ~~the Division of Rehabilitation Services~~ and the recipient of services in writing. The written notification shall include:

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

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

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

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

4.5. The recipient shall agree to obtain services from other entities if it is later determined he or she is eligible for personal assistance services from another entity, including, but not limited to, the Medicaid Waiver Program.

4.5.a. Recipients shall remain eligible for services under this program until they begin receiving services from another entity.

4.6. If there are no unobligated funds available, ~~the board~~ Division of Rehabilitation Services shall establish a waiting list of those individuals eligible for services.

§198-1-5. Appeals.

5.1. If a person disagrees with a decision of the board regarding eligibility or the parameters of services approved. ~~If a person is determined not to be eligible for services under this rule,~~ he or she may appeal the decision to the SILC executive committee in writing, within 30 (thirty) days of receipt of written notification.

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

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

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

§198-1-6. Funding.

6.1. 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.

6.2. 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.

6.3. The program will function within a budget developed and approved by the board provided the budget is consistent with the requirements of §18-10L and this legislative rule.

§198-1-7. Sliding Scale.

7.1. 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.

7.1.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, pension, SSDI, SSI, alimony, child support, and other sources shall be entered into calculated total income.

7.1.b. Deductions:

7.1.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.

7.1.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.

7.1.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

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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.

7.2. 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

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Statement of Need

During the 2004 Regular Session of the West Virginia Legislature, the Ron Yost Personal Assistance Services Act was amended. Because of the amendments to this Act, the Division of Rehabilitation Services and the Ron Yost Personal Assistance Services Board determined that the Legislative Rule, Title 198, Series 1, Ron Yost Personal Assistance Services Act, needed to be amended in order to make the Legislative Rule consistent with the revised legislation.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD

Type of Rule: Legislative Interpretive Procedural

Agency: WEST VIRGINIA DIVISION OF REHABILITATION SERVICES

Address: PO Box 50890 State Capitol Charleston, West Virginia 25305-0890

Phone Number: 304-766-4997 Email: tracyc@mail.drs.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The amendments to the Legislative Rule, Title 198, Series 1, Ron Yost Personal Assistance Services Act, do not have a fiscal impact.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues			

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3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

Jamice D. Holland