

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box  
Filing Date

JUN 30 10 46 AM '99

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Rehabilitation Services TITLE NUMBER: 198

CITE AUTHORITY: §18-10L-1

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

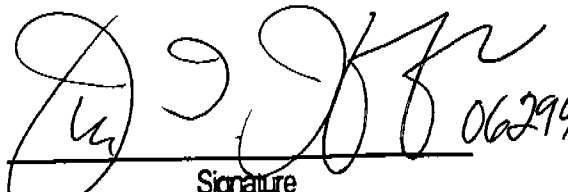
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 1

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

Ron Yost Personal Assistance Services Act Board

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

  
Signature 062999

Use additional sheets if necessary

\$3.60

**EMERGENCY RULE QUESTIONNAIRE**

DATE: July 1, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Rehabilitation Services

P. O. Box 50890, State Capitol  
Charleston, WV 25305

Phone: (304) 766-4601

EMERGENCY RULE TITLE: Ron Yost Personal Assistance Services Act Board

1. Date of filing of proposed legislative rule: July 1, 1999
2. Statutory authority for promulgating emergency rule:  
§18-10L-1
3. Date of filing of proposed legislative rule: June 30, 1999
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? This emergency rule adopts new language.
5. Has the same or similar emergency rule previously been filed and expired?  
No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.  
The statutory authority was passed during the 1999 Regular Session of the Legislature and the funds attached to the statute cannot be expended until there are rules in place to do so. If emergency rules were not established, the provision of services would be delayed to persons with severe disabilities.

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7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This rule is necessary in order for the Division under the direction of the Ron Yost Personal Assistance Services Act Board to begin providing services to West Virginians with severe disabilities who may otherwise be forced to enter an institution rather than live in their own communities.

# **CIRCUMSTANCES**

**Title 198**

**Legislative Rules**

**West Virginia Division of Rehabilitation Services**

**Ron Yost Personal Assistance Services Act Board**

**Series 1**

The purpose of this rule is to guide the West Virginia Division of Rehabilitation Services and the Ron Yost Personal Assistance Services Act Board in the implementation and administration of the Ron Yost Personal Assistance Act as delineated in WV Code §18-10L-1.

# **SUMMARY**

**Title 198**

**Legislative Rules**

**West Virginia Division of Rehabilitation Services**

**Ron Yost Personal Assistance Services Act Board**

**Series 1**

This rules establishes procedures and standards applicable to the implementation of the Ron Yost Personal Assistance Services Act.

**APPENDIX B**

**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** P. O. Box 50890, State Capitol  
Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$	\$	\$	\$	\$
<b>PERSONAL SERVICES</b>	- 0 -				
<b>CURRENT EXPENSE</b>	- 0 -				
<b>REPAIRS &amp; ALTERNATIONS</b>	- 0 -				
<b>EQUIPMENT</b>	- 0 -				
<b>OTHER</b>	- 0 -				

**2. Explanation of above estimates:**

These rules do not include any fees which would either generate revenue or incur any costs.

**3. Objectives of these rules:**

To establish the procedures and standards applicable to the implementation of the Ron Yost Personal Assistance Services Act.

Rule Title: \_\_\_\_\_

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There is no economic impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

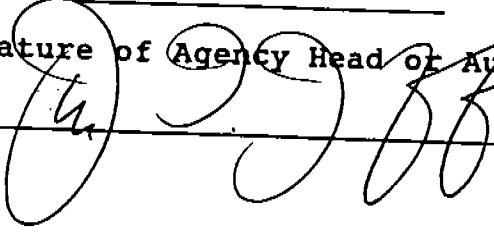
None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 062999

Signature of Agency Head or Authorized Representative

 \_\_\_\_\_

LEGISLATIVE RULE

RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD

TITLE 198

LEGISLATIVE RULE

RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD

SERIES 1

§198-1-1. General.

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

1.2. **Authority.** West Virginia Code §18-10L-1.

1.3. **Filing Date.**

1.4. **Effective Date.**

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA  
JUN 30 10 48 AM '99  
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§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 shall be the Executive Director of the SILC and the director of the Division of Rehabilitation Services or 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 serve for terms of three (3) years.

**3.2.a.** With the exception of the SILC member as described in 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.c.2.** two members shall be appointed for a term of two years,

**3.2.c.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 must 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 must be authorized by the SILC chairperson and shall be paid from moneys in the Fund.

**3.5.** Board members who are absent from more than two 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.** Application for services will be made with the West Virginia Division of Rehabilitation Services. The Division of Rehabilitation Services rehabilitation counselor shall make a preliminary eligibility determination based upon the definition of severe disability as described under definitions in WV Code §18-10L-3(3). Once this preliminary assessment is made the counselor will schedule a functional assessment with a certified provider within 30 days.

**4.1.a.** The certified provider shall provide the Board a copy of the functional assessment within seven (7) days of the assessment

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

**4.2.a.** Applications will be reviewed within 30 days of the functional assessment unless there are no unobligated funds available.

**4.2.b.** If there are no unobligated funds available, applications will be reviewed at the next regularly scheduled meeting of the board.

**4.3.** The Board shall review applications using the following priorities:

**4.3.a.** Unless a person receives services under this rule he or she will be placed in an institutional setting not of their choice;

**4.3.b.** A person receiving services under this rule will be able to leave an institutional setting and live in his or her own community in a setting of their own choice; and

**4.3.c.** Other applications will be accepted 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. Written notification includes:

**4.4.a.** The number of hours a 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.b.** Any training the recipient may need in order to manage a personal assistant.

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

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

**4.5.a.** Individuals will remain eligible for services under this program until such time they begin receiving services from another entity.

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

**§198-1-5. Funding.**

**5.1.** Five (5%) percent of the Funds will be designated for the Board to use for administrative costs. The Division of Rehabilitation Services may use another two (2%) percent of the Funds for administration of the program; for a total of seven (7%) percent administrative costs.

**5.2.** 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.

**§198-1-6. Sliding Scale.**

**6.1.** The level of financial assistance will be determined, in part, based on the applicant's adjusted annual income at the time of the review. The Board will review this information on a yearly basis.

**6.1.a.** The adjusted annual income will 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 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 will be entered into calculated total income.

**6.1.b. Deductions:**

**6.1.b.1.** The total annual income will 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.

**6.1.b.2.** The applicant's total annual earned income will be reduced by \$3,000 for the first dependent (not including applicant), \$2,000 for the second dependent, and \$1,000 for each dependent thereafter. Each dependent claimed must 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.

**6.1.b.3.** The applicant's total annual earned income will be reduced by the amount of the applicant's necessary expenses related to the disability, if any. Such 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 that such items having an original purchase cost of \$1,500 or less may be claimed in a single year at the applicants election. Only that portion of a disability-related expense not reimbursed by any third-party may be claimed.

**6.2. Reimbursement Rate schedule:**

Income Reimbursement Category	Adjusted Annual Income	Rate
1	\$ 0 - 21,999	1.00
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

# DEPARTMENT OF EDUCATION AND THE ARTS

## Office of the Secretary

State Capitol Bldg. 5, Room 205  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305  
Telephone: (304) 558-2440  
Fax: (304) 558-1311

Cecil H. Underwood  
Governor

David R. Ice  
Cabinet Secretary

June 30, 1999

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305


Dear Secretary Hechler:

I hereby grant consent as pursuant to West Virginia Code §5F-2-2 for the promulgation of the following Emergency Rule of the West Virginia Division of Rehabilitation Services Ron Yost Personal Assistance Services Act Board.

Title 198, Series 1: Ron Yost Personal Assistance Services Act Board

A copy of the rule is attached.

Sincerely,

  
David R. Ice  
Cabinet Secretary

Attachment

cc: Jim Jeffers, Director  
Division of Rehabilitation Services

Ann Meadows, Executive Director  
Statewide Independent Living Council

Mark Derry, Chairperson  
Ron Yost Personal Assistance Services Act Board



WEST VIRGINIA DEPARTMENT OF EDUCATION AND THE ARTS  
**DIVISION OF REHABILITATION SERVICES**

JAMES S. JEFFERS, DIRECTOR

June 30, 1999

The Honorable David R. Ice, Cabinet Secretary  
Department of Education and the Arts  
Building 5, Room 205  
Charleston, West Virginia 25305

Dear Secretary Ice:

On behalf of the Ron Yost Personal Assistance Services Act Board, I am forwarding a notice of adoption of the following Emergency Rule:

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

This rule has been approved by the board.

Could you please review the enclosed and, if you approve, forward to the Secretary of State for filing. Thank you for your assistance.

Sincerely,



James S. Jeffers  
Director

Enclosure

cc: Ann Meadows, Executive Director  
Statewide Independent Living Council

Mark Derry, Chairperson  
Ron Yost Personal Assistance Services Act Board