

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2013 JUL 19 PM 2:27

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

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

CITE AUTHORITY: W.Va. Code §18-10L-6

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Ron Yost Personal Assistance Services Act Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 16, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

Administrative Offices, 107 Capitol Street

Charleston, West Virginia 25301

LEGISLATIVE RULE TITLE: ~~Ron Yost Personal Assistance Services Act Board~~

1. Authorizing statute(s) citation W.Va. Code §18-10L-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 12, 2013

b. What other notice, including advertising, did you give of the hearing?  
Notice was posted on the Division of Rehabilitation Services' home page, with the link to the proposed rules and comment instructions

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 15, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached   X   No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 19, 2013

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- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Tracy J. Carr, Senior Manager, Governmental and Public Relations  
WVDRS, Administrative Offices  
107 Capitol Street, Charleston, WV 25301

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Tracy.J.Carr@wv.gov

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Phone: 304 356 2061

Fax: 304 558 1687

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

-N/A

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b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**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 as follows:

- clarifying that voting members make up a quorum and are eligible to serve as officers;
- authorizing a signatory, to be designated by the Statewide Independent Living Council, the authority to sign for reimbursement of board member expenses;
- defining the term unobligated funds;
- clarifying term limits for board members; and
- clarifying that applicants and recipients of the program must apply for personal assistance services from Medicaid and must accept those services, if determined eligible, to avoid a duplication of services and to expand the availability of personal assistance services in West Virginia.

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

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

**Statement of Circumstances**

The revisions to the Legislative Rule, Title 198, Series 1, Ron Yost Personal Assistance Services Act are being proposed in order to increase the effectiveness of the Ron Yost Personal Assistance Services Board. The changes will also ensure against the duplication of services and expand the availability of personal assistance services in West Virginia.

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: Tracy Carr  
West Virginia Division of Rehabilitation Services  
Administrative Offices  
107 Capitol Street  
Charleston, WV 25301

Phone Number: 304-356-2061 Email: Tracy.J.Carr@wv.gov

**Fiscal Note Summary**

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

The proposed revisions to this rule will not have an effect on costs and revenues of the state.

**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	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

Rule Title: Ron Yost Personal Assistance Services Act Board

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

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: May 29, 2013

Signature of Agency Head or Authorized Representative

*James P. Ashworth*

2013 JUL 19 PM 2:26

**TITLE 198**  
**LEGISLATIVE RULE**  
**WEST VIRGINIA DIVISION OF REHABILITATION SERVICES**  
**SERIES 1**  
**RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD**

JUL 19 2013  
 STATE OF WEST VIRGINIA

**§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. of this rule, shall be the executive director of the SILC and the director of the Division of Rehabilitation Services or his or her designee. 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 voting members being present, at least one of whom shall be an officer.

3.3.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.

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 designated SILC signatory chairperson and shall be paid from moneys allocated each year by the legislature.

3.5. Board members who are absent from more than 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. Appointment to an unexpired term does not preclude an individual from serving two full three-year terms.

#### **§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. The board 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). 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. Unobligated funds are defined as appropriated funds that remain uncommitted.

4.1.a. The 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 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 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 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 apply for and accept personal assistance obtain services from Medicaid, if determined eligible ~~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 Medicaid ~~another entity.~~

4.6. If there are no unobligated funds available, the board 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, 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 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 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 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:

198CSRI

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

## **Carr, Tracy J**

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**From:** Ann McDaniel <ann.meadows@wvsilc.org>  
**Sent:** Thursday, July 11, 2013 2:34 PM  
**To:** Carr, Tracy J  
**Cc:** paulwsmith@suddenlinkmail.com; Stone, Cari J; Lindsay Roberts  
**Subject:** Comment on RYPAS Legislative Rules

**Importance:** High

On July 2, 2013, the Ron Yost Personal Assistance Services Board voted to endorse the Draft revisions to 198CSR1 – Title 198, Legislative Rule, West Virginia Division of Rehabilitation Services, Series 1, Ron Yost Personal Assistance Services Act Board.

All the proposed revisions are necessary to align the legislative rule with State Code Chapter 18, Article 10L and with the corresponding policies and practices of the RYPAS Program.

The Board would also like to thank the Division for responding to its request the proposed revisions be made.

Ann Watts McDaniel, Executive Director  
West Virginia Statewide Independent Living Council  
5010 C Fairlawn Avenue  
PO Box 625  
Institute, WV 25112-0625  
304-766-4624 (Voice or TTY)  
Fax: 304-766-4721  
Cell: 304-543-9331  
[ann.meadows@wvsilc.org](mailto:ann.meadows@wvsilc.org)  
[www.wvsilc.org](http://www.wvsilc.org)

## **Ron Yost Personal Assistance Services Act Board Legislative Rule**

### **DRS Response to comments received:**

DRS received one comment from the Ron Yost Personal Assistance Services Act Board supporting the proposed changes.

DRS appreciates the support of the Board.

No comments were received that would necessitate amendments to the proposed rule.