

HB 2438

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2438

(By Delegates Douglas, Leach and Hubbard)



Passed March 13, 1999

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK
SECRETARY OF STATE

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FOR

H. B. 2438

(BY DELEGATES DOUGLAS, LEACH AND HUBBARD)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-1, relating to the creation of the "Ron Yost Personal Assistance Services Act" to provide personal assistance services to certain severely disabled individuals; stating public policy; making the division of rehabilitation responsible for administering the program through the West Virginia statewide independent living council; providing for development and components of program; creating a special account in the state treasury designated as the "Ron Yost Personal Assistance Services Fund"; limiting the amount of funds that may be expended for administrative costs; authorizing use of legislatively appropriated funds and directing application for funding from other sources; requiring the division of rehabilitation services to propose legislative rules to implement article; providing for payment based on ability to pay; requiring annual report: and providing for an expiration date.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-l, to read as follows:

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-1. Short title.

1 This article may be known and cited as the “Ron Yost
2 Personal Assistance Services Act.”

§18-10L-2. Policy; principles; projects.

1 (a) It is hereby declared to be the public policy of this state
2 that:

3 (1) Availability of personal assistance services for persons
4 with disabilities should be increased to enable them to live in
5 their own homes and communities;

6 (2) Recipients of personal assistance will be those with
7 severe disabilities, including mental, sensory or physical
8 impairments, or any combination of impairments, who are in
9 need of assistance to live in a living arrangement of their choice
10 in lieu of a more restrictive setting; and

11 (3) Recipients of personal assistance have the right to make
12 decisions regarding and to control the provision of their
13 personal assistance services. This includes, but is not limited to,
14 hiring, training, managing, paying and terminating an assis-
15 tant’s employment.

16 (b) Implementation of the program established in this
17 article shall be based on the following five basic principles:

18 (1) Services may be received where they are needed, either
19 at home or in the community, subject to available funding;

20 (2) Services may be scheduled when they are needed,
21 twenty-four hours a day, seven days a week, as scheduled or
22 needed on an emergency basis, subject to available funding;

23 (3) Recipients contribute to the cost of services based on
24 their ability to pay;

25 (4) Recipients are granted control over the services pro-
26 vided to the fullest extent possible including how, when and by
27 whom services are provided; and

28 (5) Eligibility shall be based on functional needs rather than
29 on a medical diagnosis.

30 (c) Subject to available funds, other personal assistance
31 projects shall be developed to increase the availability of
32 services throughout the state to serve eligible individuals.

§18-10L-3. Definitions.

1 The following words and phrases, when used in this article,
2 have the following meanings unless the context clearly indi-
3 cates otherwise:

4 (1) “Personal assistance services” means:

5 (A) Those basic and ancillary services that enable eligible
6 individuals to live in their homes and communities rather than
7 in institutions and to carry out functions of daily living, self-
8 care and mobility;

9 (B) Basic services include, but are not limited to, getting in
10 and out of a bed, wheelchair or motor vehicle; assistance with
11 routine bodily functions, such as health maintenance activities;
12 bathing and personal hygiene; dressing and grooming; and
13 feeding, including preparation and cleanup.

14 (2) “Personal assistant” means an individual of the con-
15 sumer’s choice who provides personal assistance services for
16 the eligible individual.

17 (3) “Recipient” or “consumer” means any individual with
18 a physical, mental, or sensory impairment that affects one or
19 more major life activity who meets all of the following require-
20 ments:

21 (A) Experiences any physical, mental or sensory impair-
22 ment, or combination of impairments, which can be expected to
23 recur or last for a period of not less than twelve months as
24 determined by the evaluation conducted by functional assess-
25 ment;

26 (B) With support from the West Virginia statewide inde-
27 pendent living council when necessary, assumes the employer
28 responsibilities of selecting, supervising and, if needed,
29 terminating the employment of a personal assistant, or desig-
30 nates an individual to assume those responsibilities;

31 (C) With support from the West Virginia statewide inde-
32 pendent living council when necessary, manages his or her own
33 financial and legal affairs or designates an individual to manage
34 those responsibilities;

35 (D) Requires assistance to complete functions of daily
36 living, self-care and mobility, including, but not limited to,
37 those functions included in the definition of personal assistance
38 services; and

39 (E) Is not currently receiving personal assistance services
40 through any other program: *Provided*, That the division of
41 rehabilitation services may, in the event that an option for
42 consumer directed personal assistance services is developed
43 through the state's medicaid program, develop a program
44 coordinated with requirements of any medicaid option and
45 available to medicaid-eligible persons.

§18-10L-4. Programs.

1 (a) The personal assistance services program shall be
2 administered by the division of rehabilitation services through
3 the state plan for independent living and managed by the West
4 Virginia statewide independent living council, established
5 pursuant to the provisions of 29 U.S.C. § 796d.

6 (b) The West Virginia statewide independent living council
7 shall establish a standing committee to function as the con-
8 sumer board to direct the implementation of the program. The
9 board shall be composed of individuals with severe disabilities:
10 *Provided*, That one member shall be a representative of the
11 West Virginia statewide independent living council with a
12 disability. No member of the board is eligible to receive
13 personal assistance services through the program provided for
14 in this article.

1 (c) Determination of eligibility and the need for and amount
2 of personal assistance services shall be decided by the con-
3 sumer board based on functional assessments conducted using
4 a tool developed by the West Virginia statewide independent
5 living council. Each consumer assessment shall include a
6 written report which shall be filed with the division of rehabili-
7 tation services.

8 (d) The division of rehabilitation services shall develop a
9 waiting list for those eligible individuals who cannot be served
10 immediately.

11 (e) Any program developed pursuant to this article shall
12 contain provisions designed to assure that the employment of
13 any personal assistant providing services under this article is in
14 compliance with applicable state and federal laws, including,
15 but not limited to, state and federal payroll taxes, deductions
16 and withholding, wage withholding for child support, and any
17 other applicable employment related law.

18 (f) Funds or services provided to eligible individuals by the
19 personal assistance services program under this article shall not
20 be considered as income to those individuals for any purpose
21 under this code or under the rules of any agency of state
22 government.

§18-10L-5. Funding.

1 (a) There is hereby created in the state treasury a special
2 fund designated the "Ron Yost Personal Assistance Services
3 Fund". The fund shall be an appropriated account within the
4 division of rehabilitation services and the moneys shall be
5 expended exclusively for the purposes of this article.

6 (b) Funds made available for programs under this article
7 may be used only for the planning, designing, delivering and
8 administering of personal assistance services and training. The
9 division of rehabilitation services may use not more than seven
10 percent of the total allocation for administrative costs.

11 (c) The programs created pursuant to this article may use
12 funds from a number of sources, including state and federal

13 funds, program fees and other allotted moneys. The division of
14 rehabilitation services shall apply for and use all available
15 funding sources to carry out this program.

16 (d) Funds shall be disbursed in a manner that ensures
17 maximum consumer control of the services provided under the
18 program.

19 (e) Personal assistance services shall be available only to
20 the extent funding is available through annual appropriations of
21 state, federal and other allotted funds.

§18-10L-6. Rules.

1 The division of rehabilitation services, as directed by the
2 consumer board, shall propose rules for legislative approval in
3 accordance with the provisions of article three, chapter twenty-
4 nine-a of this code, necessary for the effective administration of
5 this article including a sliding scale for funding based on the
6 recipient's, as the employer, ability to contribute to the cost of
7 services.

§18-10L-7. Report.

1 An annual report shall be filed with the Legislature on or
2 before the first day of January of each year, which is to include
3 a summary of the personal assistance services provided under
4 this article and recommendations regarding the program for
5 upcoming fiscal years.

§18-10L-8. Continuation of program.

1 The personal assistance services program shall continue to
2 exist until the first day of July, two thousand two, pursuant to
3 the provisions of article ten, chapter four of this code, to allow
4 for the completion of a preliminary performance review by the
5 joint committee on government operations.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



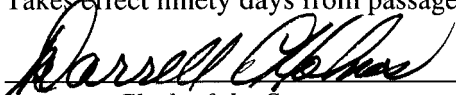
Chairman Senate Committee



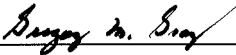
Chairman House Committee

Originating in the House.

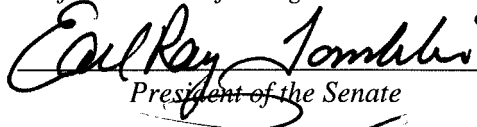
Takes effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

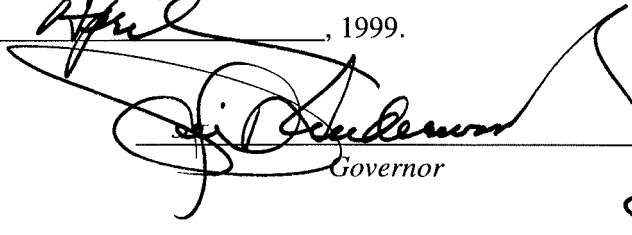


President of the Senate



Speaker of the House of Delegates

The within approved this the 15th
day of April, 1999.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 3:25 pm