WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1999

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ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2438

(By Delegates Douglas, Leach and Hubbard)

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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-l, 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-I, to read as follows:

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-1. Short title.

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

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

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

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

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

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

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

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

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

(3) Recipients contribute to the cost of services based on their ability to pay;
(4) Recipients are granted control over the services provided to the fullest extent possible including how, when and by whom services are provided; and

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

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

§18-10L-3. Definitions.

The following words and phrases, when used in this article, have the following meanings unless the context clearly indicates otherwise:

(1) "Personal assistance services" means:

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

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

(2) "Personal assistant" means an individual of the consumer's choice who provides personal assistance services for the eligible individual.

(3) "Recipient" or "consumer" means any individual with a physical, mental, or sensory impairment that affects one or more major life activity who meets all of the following requirements:

(A) Experiences any physical, mental or sensory impairment, or combination of impairments, which can be expected to recur or last for a period of not less than twelve months as determined by the evaluation conducted by functional assessment;
(B) With support from the West Virginia statewide independent living council when necessary, assumes the employer responsibilities of selecting, supervising and, if needed, terminating the employment of a personal assistant, or designates an individual to assume those responsibilities;

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

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

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

§18-10L-4. Programs.

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

(b) The West Virginia statewide independent living council shall establish a standing committee to function as the consumer board to direct the implementation of the program. The board shall be composed of individuals with severe disabilities: Provided, That one member shall be a representative of the West Virginia statewide independent living council with a disability. No member of the board is eligible to receive personal assistance services through the program provided for in this article.
(c) Determination of eligibility and the need for and amount of personal assistance services shall be decided by the consumer board based on functional assessments conducted using a tool developed by the West Virginia statewide independent living council. Each consumer assessment shall include a written report which shall be filed with the division of rehabilitation services.

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

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

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

§18-10L-5. Funding.

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

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

(c) The programs created pursuant to this article may use funds from a number of sources, including state and federal
funds, program fees and other allotted moneys. The division of
rehabilitation services shall apply for and use all available
funding sources to carry out this program.

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

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

§18-10L-6. Rules.

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


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

§18-10L-8. Continuation of program.

The personal assistance services program shall continue to
exist until the first day of July, two thousand two, pursuant to
the provisions of article ten, chapter four of this code, to allow
for the completion of a preliminary performance review by the
joint committee on government operations.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]
Chairman Senate Committee
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signatures]
Clerk of the Senate

[Signatures]
Clerk of the House of Delegates

[Signatures]
President of the Senate
Speaker of the House of Delegates

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

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date: 3/30/99
Time: 5:28