

STATE OF WEST VIRGINIA

**PRELIMINARY PERFORMANCE REVIEW OF THE
RON YOST PERSONAL ASSISTANCE SERVICES PROGRAM**

**Personal Assistance Services Program
Is Not Designed to Increase Availability
of the Service as Intended by Law**

**Personal Assistance Services Program
Does Not Assure that Recipients Comply with
Employment Laws**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
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June 2001

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John Sylvia
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June 10, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Ron Yost Personal Assistance Services Program*, which will be presented to the Joint Committee on Government Operations on Sunday, June 10, 2001. The issues covered herein are: "*Personal Assistance Services Program Is Not Designed to Increase Availability of the Service as Intended by Law*" and "*Personal Assistance Services Program Does Not Assure that Recipients Comply with Employment Laws.*"

We received the agency response on June 6, 2001. Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/aml

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Executive Summary

With the creation of the Ron Yost Personal Assistance Services Program in 1999 the Legislature intended to increase the availability of personal assistance services for persons with severe disabilities, allowing them the choice of living in their own homes and communities. This is the first preliminary performance review of the program and two issues are identified.

Issue 1: The Ron Yost Personal Assistance Services Program Is Not Designed to Increase Availability of the Service as Intended by Law.

The Legislature intended the Ron Yost Personal Assistance Services Program to increase the availability of personal assistance services. In order to increase the availability of personal assistance services, the program should be designed to provide services to individuals who are ineligible for or are not receiving services from other programs. **If the program is providing what is currently available, then it is substituting not increasing the availability of services.** Currently, the Ron Yost Program provides services to individuals without determining if they are eligible to receive the service from another program. It is known that one of the twenty-three individuals on the program is eligible for Medicaid, and it is likely that many, if not all of the recipients, are eligible for services through another program. Potentially, individuals who are ineligible to receive services through other programs may be denied Ron Yost services because those limited funds are used to provide services to individuals who are eligible for the service through another program. As of April 2001, 24 individuals were placed on a waiting list for Ron Yost services. Another result is the state pays more to provide personal assistance services through this Program than if the services were obtained through Medicaid with the approximately 75% federal match. If every Ron Yost recipient is eligible for Medicaid then the services have cost the state an estimated \$233,000 more than if they were provided through Medicaid.

Issue 2: There is No Assurance that Recipients Comply with Employment Laws as Required by Law.

Since the intent of the legislation is to have recipients assume the responsibility of being an employer of personal assistants, the program as administered by the Division of Rehabilitation Services (DRS) is to assure that recipients carry out the duties of being employers, including compliance with employment related laws. Currently, the program is not designed to assure that recipients are in compliance with employment laws. **The immediate effect is that recipients could be faced with substantial tax liabilities, personal assistants may not have appropriate coverage for workers' compensation or unemployment compensation, and fraudulent use of funds may go undetected.**

Review Objective, Scope and Methodology

The following preliminary performance review of the Personal Assistance Services Program is required by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5. The program is mandated to provide persons with severe disabilities personal assistants to assist them in their daily life routines, thereby reducing the need to place them in a more restrictive setting such as a nursing home.

The objective of this review is to determine if the Program is meeting its mandated objective to increase personal assistance services and to examine if the program is assuring recipients fulfill their employer responsibilities.

The methodology includes discussions with the Executive Director of SILC, the Interim Director of the Division of Rehabilitation Services and a Division staff person assigned program responsibilities. A review was made of the program minutes, legislative rules, information from other states and the federal government, as well as information provided by the agency.

This review covers the period from the Program's inception in 1999 through April 2001.

Background

The Personal Assistance Services Program was created in 1999 as the Ron Yost Personal Assistance Services Act. It was intended to increase the availability of personal assistance services for persons with severe disabilities, allowing them the choice of living in their own homes and communities. Personal assistance services are functionally necessary in-home or community based services provided to severely disabled persons who need assistance in performing daily living activities. Recipients receive a weekly amount of personal assistance as determined through a functional assessment conducted by a certified provider. Recipients are provided the right to make decisions regarding and controlling the provision of their personal assistance services, including: hiring, managing, paying and firing.

The program is organized under the Department of Education and the Arts within the Division of Rehabilitation Services. The Division has contracted with the Statewide Independent Living Council (SILC) for fiscal and program administration of the program. Pursuant to statute SILC established a consumer board to direct the program. The seven voting board members have severe disabilities, one represents the SILC. Members are chosen from applications submitted to the SILC. There are also two ex-officio, non-voting members on the board: the Executive Director of the SILC and either the Director of the Division of Rehabilitation Services (DRS) or the DRS administrator responsible for the program.

Legislative rule requires the Board meet at least four times a year. While minutes of meetings were provided to the Legislative Auditor, the Secretary of State has no record of any open meeting notice ever being filed.

Initially funded at \$150,000 the program is currently funded at \$300,000 and serves 23 individuals in 12 WV counties. Twenty-four persons are on the waiting list for services. Seven percent, or \$21,000 of the funding is used for administrative fees. The average age of recipients is 65 years of age, 56% of recipients are 65 or older. Table 1 provides a brief sketch of recipients.

**Table 1
Sketch of Recipients**

Recipients	Age	Gender	Weekly hours	Disability	Annual \$ Amount
1	44	F	83.5	Muscular Dystrophy	\$26,064
2	84	F	31	Osteoporosis and osteoarthritis	\$9,672
3	61	F	80	Syringomyelia, neurological disorder	\$24,960
4	53	F	28.5		\$8,892
5	76	F	74.25	Dementia, paralysis as result of head injury	\$23,166
6	76	F	41.75	Palsy condition	\$13,026
7	85	F	57	Stroke	\$17,784
8	55	F	56.5	Stroke	\$17,628
9	69	F	35	Arthritis	\$10,920
10	73	F	75.5	Osteo and rheumatoid arthritis	\$23,556
11	90	F	60	Arthritis, blindness	\$18,720
12		F	34.25		\$10,692
13		F	49.5		\$15,444
14		F	8.25		\$2,574
15		M	77		\$24,048
16	66	M	31.75	CP	\$9,906
17	79	M	24.5	Vision and hearing impairment	\$7,644
18	34	M	18		\$5,616
19	40	M	51.5	Traumatic brain injury, quadriplegic	\$16,068
20	80	M	112	Blind	\$34,944
21	27	M	10.75	Spina bifida and seizures	\$3,354
22	45	M	32.5	SCI/quad	\$10,140
23		M	51		\$15,912
Total	\$350,730				
Blanks indicate the Legislative Auditor was unable to determine from information provided.					

Issue 1: The Ron Yost Personal Assistance Services Program Is Not Designed to Increase Availability of the Service as Intended by Law.

The Legislature intended the Ron Yost Personal Assistance Services Program to **increase** the **availability** of personal assistance services. In order to increase availability of personal assistance services, the program should be designed to provide services to individuals who are ineligible for or are not receiving services from other programs. **If the program is providing what is currently available, then it is substituting not increasing the availability of services.** Currently, the Ron Yost Program provides services to individuals without determining if they are eligible to receive the service from another program. It is known that one of the twenty-three individuals on the program is eligible for Medicaid, and it is likely that many, if not all of the recipients, are eligible for services through another program. Providing Ron Yost services without knowing if individuals are eligible for other programs runs the risk of duplicating instead of increasing availability of services. The immediate effects of the inadequate program design are as follows:

Effects of the Inadequate Program Design

1. The state would pay more to provide personal assistance services through the Ron Yost Program than if those services were obtained through Medicaid which receives an approximate 75% match from the federal government. **If every Ron Yost recipient is eligible for Medicaid then the services have cost the state an estimated \$233,000 more than if they were provided through Medicaid.** This higher cost will continue to grow if the program design is not corrected.
2. Potentially, individuals who are ineligible to receive services through other programs may be denied Ron Yost services because those limited funds are used to provide services to individuals who are eligible for the service through another program. **As of April 2001, 24 individuals were placed on a waiting list for Ron Yost services.**

The second effect would actually defeat the purpose of the Program. As stated in statute, §18-10L-2(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;" [Emphasis added].

If the Ron Yost Program is the only available source for some individuals on the waiting list, then those individuals may be denied services because funds have been committed to individuals that may be eligible for services elsewhere.

Eligibility for Other Programs is not Determined Prior to Providing Services

Currently, there are 23 individuals who have a personal assistant through the Ron Yost Program ranging from 8 hours to 112 hours a week. The individual employs the assistant and submits an invoice for payment to the SILC which administers the program. The SILC pays the individual with Ron Yost funds and the individual in turn pays the personal assistant.

The first step in applying for the services is submission of an application to the Division of Rehabilitation Services. A Division counselor makes a preliminary determination of eligibility for Ron Yost services based upon the definition of “recipient” or “consumer.” Part of the definition of recipient/consumer is that the individual must not be receiving personal assistance services through any other program.

The application inquires of the individual if he/she is receiving personal assistance services from another organization, including Home Health, Medicaid, SSI, Medley, and Early Intervention. The application also requires applicants to apply to other programs for which they may be eligible. The application contains the following statement:

I have been informed of other programs that provide personal assistance for which I may be eligible. I will apply for them, and should I become eligible and start receiving services, will inform the Ron Yost Personal Assistance Services Board immediately.

In addition, legislative rules (§198-1-4.5) for the Program contain the following requirement:

*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. [Emphasis added]*

All individuals currently receiving Ron Yost services were approved without DRS knowing if they may be eligible to receive the services through another program. Furthermore, DRS has not verified that each recipient has applied to other programs for personal assistance services as the applicant is required. Seven recipients have been receiving Ron Yost services for over a year without DRS requesting documentation that recipients complied with the application requirement to apply to other programs. **Allowing recipients to receive services for an extended period of time without verifying if they are eligible for other programs defeats the purpose of the Ron Yost Program.** Every individual who is eligible for services through another program potentially denies services to an individual who is ineligible for services through other programs. The current program design risks making nothing available to people who cannot receive personal assistance services from any source other than the Ron Yost Program. This contradicts the statutory intent.

Another inadequacy of the application process is indicated in Table 2. Almost half of the recipients who receive Ron Yost services provided no response to the inquiry as to whether they are

receiving services from another program, yet their applications were still processed and services were provided. This is an important question that should not go unanswered by the applicant.

Table 2	
Application Question:	
Do You Receive Personal Assistance Services from Another Program?	
Response	Number
No	12
Blank	11

Ron Yost Services Should Supplement Other Programs When Necessary

There is evidence of only one recipient applying to another program for services. Concerning this recipient, the Division stated the following:

One recipient of the personal assistance services program, who receives 60 hours a week, was encouraged to apply for other services, did so, and was accepted for the Medicaid program at the maximum allowable Medicaid hours of 25 hours a week. The applicant decided not to accept the Medicaid service and maintained the personal assistance services program at 60 hours a week. The personal assistance services program will continue providing services even though it is aware the recipient is eligible for other services because the recipient would otherwise not get the amount of support needed and nursing home placement would have resulted....

The above situation describes another weakness in the program. Currently, if individuals began receiving services from another program they would not be able to receive services from the Ron Yost Program. In the above mentioned case, the recipient would receive less services under Medicaid than under Ron Yost. Nevertheless, Ron Yost is not increasing availability but simply substituting what is currently available to this individual under Medicaid. Providing this service through Medicaid would be less expensive to the state, and Ron Yost funds provided to this individual potentially denies an individual the service who is ineligible for other programs. With 24 individuals placed on a waiting list, this must be a concern. **Ideally, the Ron Yost Program should increase availability to individuals by supplementing hours of services that Medicaid will not provide.**

Conclusion

The Division of Rehabilitation Services has not designed the Ron Yost Program to fulfill the statutory mandate to increase personal assistance services. It is completely contradictory to statutory intent to provide services to individuals without knowing if they are eligible for the service through

another program. There also does not seem to be an adequate concern to verify that those who are receiving services have applied to other programs. With limited funds and 24 individuals placed on a waiting list, and the additional cost to the state, it is important that the program not provide what is currently available. The Legislative Auditor concludes that the program should devote the appropriated general revenue funds toward the legislative mandate of increasing the availability of personal assistance services. By not serving the mandated population of those ineligible for other services, the program is merely duplicating existing services and not increasing personal assistance services. Also, services provided through Ron Yost are more costly to the state if the service is available through Medicaid.

One of two application options should be considered as a method to correct the program design. The first option is to not provide Ron Yost services until an applicant submits evidence that he/she has applied for existing personal assistance services and the determination of eligibility from that provider. The Division could then act accordingly, and if the applicant has demonstrated ineligibility for all other existing services then the application process would proceed. However, should the applicant not demonstrate ineligibility or provide incomplete documentation, the Division should either deny services based on the confirmation of eligibility for other services or redirect the individual to the other programs that offer personal assistance services. An alternative method would be to allow Ron Yost funding for a limited time, for example two months, until eligibility determination for all other programs is confirmed by the applicant. If the applicant is eligible for other programs or fails to return verification, then the applicant's Ron Yost funding would be discontinued.

In addition, the Legislature should consider amending the program's enabling statute to allow Ron Yost services as a supplement when an individual is eligible for and is receiving services from another program when that program provides an inadequate amount of services. This would fulfill the intent of increasing the availability of personal assistance services.

Recommendation 1:

Applicants should be required to apply for other programs they may be eligible for and return the eligibility determination to DRS before an application for Ron Yost funding is processed or in order for Ron Yost funding to continue.

Recommendation 2:

The Legislature may wish to consider amending the statute and legislative rules which prohibit an individual from receiving Ron Yost services if he/she is a recipient of another service to allow the Ron Yost Program to supplement another program when that program provides an inadequate amount of service.

Issue 2: There Is No Assurance that Recipients Comply with Employment Laws as Required by Law.

Since the intent of the legislation is to have recipients assume the responsibility of being an employer of personal assistants (§18-10L-3(3)(B)), the program as administered by the DRS is to assure that recipients carry out the duties of being employers, including compliance with employment related laws. Currently, the program is not designed to assure that recipients are in compliance with employment laws. Furthermore, DRS does not have documentation that recipients have actually hired personal assistants. **The immediate effect is that recipients could be faced with substantial tax liabilities, personal assistants may not have appropriate coverage for workers' compensation or unemployment compensation, and fraudulent use of funds may go undetected.**

The enabling statute that establishes the Personal Assistance Services Program requires that:

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 (§18-10L-4(e)). [Emphasis added]

Currently, the program has been developed to inform recipients of employment laws and the recipient's responsibilities to comply with these laws. **However, program officials do not have documentation that recipients are carrying out these responsibilities.** In addition, program officials have no documentation that recipients in fact employed a personal assistant. In a letter to the Legislative Auditor, DRS officials indicated that:

"There is no verification that the recipient hires a personal assistant other than the time sheets, signed by the personal assistant and the recipient that are submitted with the reimbursement request."

When the Legislative Auditor's Office requested wage withholding forms (W-2's) the DRS Interim Director stated that:

...the Division does not employ the personal assistants and as such are not required to do a W-2 or 1099.

From these statements the Legislative Auditor concludes the program has no required provision to assure recipients fulfill their employer responsibilities. To provide this assurance, DRS must have documentation that the required actions have been fulfilled and take appropriate action when such evidence is not submitted. The effects of recipients as employers not fulfilling his/her responsibilities, namely the proper employee withholding and reporting, would be the likelihood that recipients would not only have to pay those monies not withheld but also a penalty.

The extent DRS has knowledge of employment are the time sheets submitted for reimbursement indicating the number of hours worked. Recipients are not required to submit documentation on amounts paid for overtime, the amounts withheld for Federal and State taxes, the amounts paid towards Unemployment Compensation or Worker's Compensation, or any other employment requirement. Without this knowledge, the program is not designed to assure that applicable employment laws are being complied with by recipients. In addition, DRS needs to assure against the inappropriate or fraudulent use of these funds by recipients. The program needs to increase the accountability of recipients by requiring documentation be submitted showing that recipients have hired a personal assistant and that the applicable employment laws have been complied with. Such documentation could include proof of payment of federal and state taxes, unemployment compensation, workers' compensation, and W-2 forms.

Recommendation 3:

The Division of Rehabilitation Services should require recipients provide documentation that shows compliance with applicable employment laws.

APPENDIX A

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

May 30, 2001

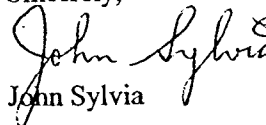
Janice A. Holland, Interim Director
Division of Rehabilitation Services
P.O. Box 50890
Charleston, West Virginia 25305

Dear Director Holland:

This is to transmit a draft copy of the Preliminary Performance Review of the Personal Assistance Services Program. We would appreciate your written response to the report by June 6, 2001 in order for it to be included in the final report.

Thank you for your cooperation.

Sincerely,


John Sylvia

Joint Committee on Government and Finance

APPENDIX B

Agency Response

Agency Response
Preliminary Performance Review of the
Ron Yost Personal Assistance Services Program

The West Virginia Division of Rehabilitation Services (the Division), in conjunction with the West Virginia Statewide Independent Living Council (the Council), has reviewed a draft of the Preliminary Performance Review of the Ron Yost Personal Assistance Service (RYPAS) Program prepared by the Office of the Legislative Auditor.

Two main areas of concern with the review have been identified.

Area 1

The report indicates that the current program design defeats the purpose of the Program and refers to §18-10L-2(a) of the statute. It appears the auditors did not take into consideration the provisions stated in §18-10L-2 (2) & (3) of the statute:

(2) Recipients of personal assistance services 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 services 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.

Additionally, the Legislative Rule for the program describes the priorities for review of applications as:

§198-1-4.

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

An example is addressed in the evidence of one individual rejecting Medicaid services in favor of RYPAS services (p. 11 in the draft report is incomplete). The individual in question was receiving 60 hours per week through the RYPAS program when she was determined eligible for the Medicaid Aged and Disabled Waiver. The recipient was given a grace period to work to expand the Medicaid services beyond the 25 hour maximum she was given. This recipient could not remain in her own home at this level of service and nursing home placement would have resulted. The family worked

tirelessly, contacting Medicaid, legislators, and anyone else who would listen to get the services this recipient needed. Services were provided by the Medicaid program during this time period. In the end, the family was unable to secure an increase in hours and "they found it increasingly difficult to work with the various caregiver agencies". The family reported absenteeism, poor work ethic, and scheduling problems, all of which were beyond the recipient's control because caregivers were employed by the agency, not by the recipient. The family elected to drop the Medicaid services and retain the RYPAS services in order to have the level of support needed for the recipient to remain at home in lieu of nursing home placement.

This is an example of the issues our state faces as it addresses compliance with the Olmstead Decision of the U.S. Supreme Court regarding the Title II provisions of the Americans with Disabilities Act, which require that services provided by the State be offered in the most integrated setting appropriate for the individual.

The Conclusion section of the draft report (p. 12) describes the "mandated population" for the program as those "ineligible for other services". The statute describes the "mandated population" as:

§18-10L-3 (3)(E) - recipient requirements - "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 available to Medicaid-eligible persons."

When this program was legislated, there were extensive waiting lists for persons to receive similar services from other providers.

Area 2

The auditors seem to want the Division to become a tax agency, thus duplicating the services of the State Tax Department and the Internal Revenue Service. In order to receive reimbursements through the RYPAS program, a recipient has to submit a signed time sheet verifying the hours worked. The time sheet is signed by both the recipient and the personal assistant. If it is later found that the time sheets are not accurate or are falsified, then one or both parties can be found guilty of fraud.

In order to substantiate the veracity of the information provided by the recipient at time of application and during the receipt of services, the Division and SILC will add assurance statements to the timesheets, reimbursement forms and the RYPAS applications currently used in the program.

In response to the recommendations made by the auditor we submit the following comments.

Recommendation #1:

We do not agree with the auditor's recommendation that applicants should be required to apply for other programs before their RYPAS application is processed. We believe this concern is addressed when the individual signs the RYPAS application form. Their signature verifies the application statement that they are not currently receiving services from another entity. The signature also indicates their agreement to go off the RYPAS program should they become eligible and begin receiving services from another program. If in fact this is not the case and the State discovers the individual is receiving other services, they could be required to return all funds they have fraudulently received through RYPAS.

Recommendation #2

Although we agree in theory to the auditor's recommendation that the statute and legislative rules be revised to allow RYPAS to supplement another program when that program provides an inadequate amount of service, such an action could become a pitfall. Other programs could become dependent on RYPAS as a supplement thus increasing dependency on limited state funds. The Medicaid programs (and other programs) need to be modified to provide needed services in adequate amounts. These modifications are necessary for the State to meet the requirements of the ADA and the Olmstead Decision of the Supreme Court to provide such services in the most integrated setting and prevent unnecessary institutionalization. It is also more responsible and responsive to provide adequate services to meet the needs of West Virginians with disabilities.

In conclusion, the Division and the Council recognized in establishing this new program that there would be a need to adjust policies and procedures as problems and/or concerns were identified and expected that the sunset provision would provide an opportunity for this audit and give the Legislature the opportunity to provide guidance on needed changes.

