



**WEST VIRGINIA
DIVISION OF REHABILITATION SERVICES**

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Marijane K. Waldron, Director

November 16, 2018

The Honorable Jim Justice
Office of the Governor
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Governor Justice:

Pursuant to Executive Order 3-18, the Regulatory Review Report for the West Virginia Division of Rehabilitation Services is enclosed.

Please don't hesitate to contact me should you need further information or if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Marijane K. Waldron".

Marijane K. Waldron
Director

cc: Legislative Rulemaking Review Committee
Acting Commerce Cabinet Secretary W. Clayton Burch

Enclosure

**West Virginia Division of Rehabilitation Services
Regulatory Review Report
November 2018**

§130 CSR 3 – Low Vision Driver Training (Legislative)

Description – This rule establishes the criteria, including visual standards, required for acceptance into a Low Vision Driver Training Program, which allows qualified individuals with low vision to utilize bioptic telescopic devices to drive in West Virginia. The rule also establishes curriculum requirements for the Low Vision Driver Training Program and sets standards for the successful completion of the Low Vision Driver Training Program provided by the Division of Rehabilitation Services.

Date of First Promulgation – July 1, 2009

Continuation Determination – Legislative Rule §130 CSR 3 should be continued without change.

Reasoning for Determination – W. Va. Code §17B-2B authorizes West Virginia’s Class G driver’s license and specifics relating to an approved driver training program for individuals with low vision meeting specific criteria. W. Va. Code §17B-2B-10 requires the Division of Rehabilitation Services to promulgate rules that establish:

- (1) additional criteria, including minimum visual acuity and visual field standards, for acceptance into an approved driver training program;
- (2) additional curriculum requirements for an approved driver training program;
- (3) standards for successful completion of an approved driver training program;
- (4) standards for the comprehensive road skills test;
- (5) criteria for certifying whether an out-of-state driver training program is substantially equivalent to an approved driver training program in this state;
- (6) minimum requirements for additional driver training, if required, including criteria for night time driving; and
- (7) any other standards or criteria necessary to implement this article.

Legislative Rule §130 CSR 3 is necessary for the safe and effective operation of West Virginia’s Low Vision Driver Training Program.

§193 CSR 1 – West Virginia Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities Board (Legislative)

Description – This rule applies to the procedures and standards applicable to the West Virginia Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities, a statewide program for making loans from a revolving fund to qualified borrowers to improve the independence of or to otherwise assist West Virginia residents with disabilities in becoming more productive members of the community. The West Virginia Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities board may make loan funds available to qualified borrowers for approved purposes in accordance with this rule.

Date of First Promulgation – May 24, 1999

Continuation Determination – Legislative Rule §193 CSR 1 should be continued without change.

Reasoning for Determination – W. Va. Code §29-24 creates the Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities Act, which establishes a loan fund for individuals with disabilities to access in order to purchase necessary technology-related devices and/or services to help them better participate in society and the workforce. It also creates a board to oversee the fund and its operations. W. Va. Code §29-24-5(a)(3) requires the Division of Rehabilitation Services to promulgate rules that establish:

- (A) guidelines, procedures, reporting requirements, accountability measures and such other criteria as the board deems appropriate and necessary to fulfill its governance responsibility under this article if it elects to contract with a nonprofit, consumer-driven organization to carry out the purposes of this article;
- (B) an appeals process with regard to the administration of the fund; and
- (C) rules governing the operation of the fund, including, but not limited to, eligibility of receipt of funds and all other matters consistent with and necessary to accomplishing the purpose of this fund.

Legislative Rule §193 CSR 1 is necessary for the effective operation of West Virginia's Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities.

§197 CSR 1 – West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund (Legislative)

Description – This rule establishes procedures and standards applicable to the implementation of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Act. Under this Act, the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board may make funding available for services to qualified individuals for approved purposes in accordance with this rule.

Date of First Promulgation – July 1, 2000

Continuation Determination – W. Va. Code §9-10-5(b) requires Legislative Rule §197 CSR 1 to remain in force and effect until the promulgation of new or additional rules by the Secretary of the Department of Health and Human Resources.

Reasoning for Determination – W. Va. Code §18-10K created the West Virginia Traumatic Brain and Spinal Cord Injury Fund, which was to be administered by the West Virginia Division of Rehabilitation Services, and a board to oversee the fund. During the 2018 Regular Session of the West Virginia Legislature, House Bill 3104 was passed and was approved by the Governor on March 22, 2018. HB 3104 repealed W. Va. Code §18-10K and transfers authority over the West Virginia Traumatic Brain and Spinal Cord Injury Fund to the Secretary of the Department of Health and Human Resources; however, W. Va. Code §9-10-5(b) requires Legislative Rule §197 CSR 1 to remain in force and effect until the promulgation of new or additional rules by the Secretary of the Department of Health and Human Resources.

§198 CSR 1 – Ron Yost Person Assistance Services Act Board (Legislative)

Description – This rule establishes procedures and standards applicable to the implementation of the Ron Yost Personal Assistance Services Act, which provides funding assistance for eligible individuals with disabilities to receive personal assistance services in their homes.

Date of First Promulgation – July 1, 2000

Modified – April 10, 2006

Modified – May 9, 2014

Continuation Determination – Legislative Rule §198 CSR 1 should be continued without change.

Reasoning for Determination – W. Va. Code §18-10L-6 requires the West Virginia Division of Rehabilitation Services to promulgate legislative rules necessary for the administration of the Ron Yost Personal Assistance Services Program, including a sliding scale for funding based on the recipient's ability to contribute to the cost of services.

§130 CSR 4 – Rules of Procedures for Hearings Involving Applicants Who have been Found not Eligible or have been Attendant Care Services (Procedural)

Description – These procedural rules establish the general procedures for conducting fair hearings for applicants who appeal the Division's decision denying them attendant care services. Section 2300 of the West Virginia Division of Vocational Rehabilitation Manual dealing with fair hearings shall be controlling when dealing with this fair hearing process.

Date of First Promulgation – January 1, 1987

Continuation Determination – The Division of Rehabilitation Services plans to submit a request to repeal Procedural Rule §130 CSR 4.

Reasoning for Determination – The Division of Rehabilitation Services has updated policies and procedures related to Attendant Care Services, including procedures for appealing decisions made under the program. Procedural Rule §130 CSR 4 is out of date with current policies and procedures governing this program.

§130 CSR 5 – Rules of Procedure for Hearings Involving Applicants Who have been Found not Eligible to Receive Rehabilitation Services or for Any Eligible Client Who Has Been Denied Specific Rehabilitation Services (Procedural)

Description – These procedural rules establish the general procedures for conducting fair hearings for applicants who have been found not eligible to receive rehabilitation services or any specific rehabilitation services.

Date of First Promulgation – January 1, 1987

Continuation Determination – The Division of Rehabilitation Services plans to submit a request to repeal Procedural Rule §130 CSR 5.

Reasoning for Determination – The Division of Rehabilitation Services operates the state/federal vocational rehabilitation program in West Virginia, as mandated by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, in accordance with federal regulations specifically outlined in Title 34 of the Code of Federal Regulations. To comply with federal law and regulations, the Division of Rehabilitation Services maintains a Client Services Manual, which establishes policies and procedures for the administration of the state/federal vocational rehabilitation services program. The Client Services Manual includes a section covering Due Process for individuals who are found not to be eligible or are denied a service through the vocational rehabilitation program. Procedural Rule §130 CSR 5 is out of date with current requirements under federal law and federal regulations and therefore, needs to be repealed.

§130 CSR 6 – Rules of Procedure for Consumer Advisory Committees, Meetings and Duties (Procedural)

Description – These procedural rules set forth the means by which the time and place of all regularly scheduled meetings of the Consumer Advisory Committees, and the time, place and purpose of all special meetings are made available in advance to the public and the news media, except in the event of an emergency requiring immediate official action, and also sets forth certain bylaws of the Committees. These procedural rules also outline the basic purposes of the Committees and the make-up and responsibilities of their membership.

Date of First Promulgation – January 1, 1987

Continuation Determination – The Division of Rehabilitation Services plans to submit a request to repeal Procedural Rule §130 CSR 6.

Reasoning for Determination – The Division of Rehabilitation Services operates the state/federal vocational rehabilitation program in West Virginia, as mandated by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act. The federal Rehabilitation Act requires a State Rehabilitation Council, whose members are appointed by the governor, to assist the Division of Rehabilitation Services in the development of goals and priorities, programs and policies. The Council is also responsible for reviewing and analyzing the effectiveness and satisfaction of rehabilitation services provided by the Division of Rehabilitation Services from information gathered from former clients through consumer satisfaction surveys. Consumer advisory committees no longer exist in the capacity outlined in this procedural rule. Therefore, Procedural Rule §130 CSR 6 is no longer relevant or germane and needs to be repealed.

§197 CSR 2 – West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund (Procedural)

Description – These rules establish procedures under which the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund Board conducts business.

Date of First Promulgation – July 1, 1999

Continuation Determination – W. Va. Code §9-10-5(b) requires Procedural Rule §197 CSR 2 to remain in force and effect until the promulgation of new or additional rules by the Secretary of the Department of Health and Human Resources.

Reasoning for Determination – W. Va. Code §18-10K created the West Virginia Traumatic Brain and Spinal Cord Injury Fund, which was to be administered by the West Virginia Division of Rehabilitation Services, and a board to oversee the fund. During the 2018 Regular Session of the West Virginia Legislature, House Bill 3104 was passed and was approved by the Governor on March 22, 2018. HB 3104 repealed W. Va. Code §18-10K and transfers authority over the West Virginia Traumatic Brain and Spinal Cord Injury Fund to the Secretary of the Department of Health and Human Resources; however, W. Va. Code §9-10-5(b) requires Legislative Rule §197 CSR 2 to remain in force and effect until the promulgation of new or additional rules by the Secretary of the Department of Health and Human Resources.