

770: 101

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1986



ENROLLED

HOUSE BILL No. 102

(By Mr. *Speaker, Mr. Albright, + Del. Swann*)
[By request of the Executive]



Passed *May 20,* 1986

In Effect *July 1, 1986* ~~Passage~~

ENROLLED
H. B. 102

(By MR. SPEAKER, MR. ALBRIGHT and DELEGATE SWANN)
[By request of the Executive]

[Passed May 20, 1986; in effect July 1, 1986.]

AN ACT to amend and reenact section one, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, all relating to providing attendant care services to severely disabled adults thereby enabling them to enter or continue in the workforce.

Be it enacted by the Legislature of West Virginia:

That section one, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-1. Definitions.

- 1 As used in this article:
- 2 (1) "State board" means the state board of vocational
3 education.
- 4 (2) "Division" means the division of vocational
5 rehabilitation established by this article.
- 6 (3) "Director" means the director of the division of
7 vocational rehabilitation.

8 (4) "Employment handicap" means a physical or
9 mental condition which constitutes, contributes to, or if
10 not corrected will probably result in, an obstruction to
11 occupational performance.

12 (5) "Disabled individual" means any person who has
13 a substantial employment handicap.

14 (6) "Vocational rehabilitation" and "vocational rehabil-
15 itation services" means any services, provided directly
16 or through public or private instrumentalities, found by
17 the director to be necessary to compensate a disabled
18 individual for his employment handicap and to enable
19 him to engage in a remunerative occupation including,
20 but not limited to, medical and vocational diagnosis,
21 vocational guidance, counseling and placement, rehabil-
22 itation training, attendant care services, physical
23 restoration, transportation, occupational licenses,
24 occupational tools and equipment, including motor
25 vehicles, maintenance, and training books and
26 materials.

27 (7) "Rehabilitation training" means all necessary
28 training provided to a disabled individual to compensate
29 for his employment handicap including, but not limited
30 to, manual, preconditioning, prevocational, vocational,
31 and supplementary training and training provided for
32 the purpose of achieving broader or more remunerative
33 skills and capacities.

34 (8) "Physical restoration" means any medical, surgical
35 or therapeutic treatment necessary to correct or
36 substantially reduce a disabled individual's employment
37 handicap within a reasonable length of time including,
38 but not limited to, medical, psychiatric, dental and
39 surgical treatment, nursing services, hospital care not
40 to exceed ninety days, convalescent home care, drugs,
41 medical and surgical supplies, and prosthetic applian-
42 ces, but excluding curative treatment for acute or
43 transitory conditions.

44 (9) "Prosthetic appliance" means any artificial device
45 necessary to support or take the place of a part of the
46 body or to increase the acuity of a sense organ.

47 (10) "Occupational licenses" means any license, permit
48 or other written authority required by any government-
49 tal unit to be obtained in order to engage in an
50 occupation.

51 (11) "Maintenance" means money payments not
52 exceeding the estimated cost of subsistence during
53 vocational rehabilitation.

54 (12) "Regulations" means regulations made by the
55 director with the approval of the state board.

56 (13) "Attendant care evaluation unit" means any
57 agency certified by the division of vocational rehabili-
58 tation that employs a qualified evaluator to provide
59 evaluations and attendant referrals such as the centers
60 for independent living, the West Virginia rehabilitation
61 center and any other unit approved by the division.

62 (14) "Attendant care services" means services which
63 include, but are not limited to:

64 (a) Routine bodily functions such as bowel and bladder
65 care;

66 (b) Dressing;

67 (c) Ambulation;

68 (d) Meal preparation and consumption;

69 (e) Assistance in moving in and out of bed;

70 (f) Bathing and grooming;

71 (g) Housecleaning and laundry; and

72 (h) Any other similar activity of daily living.

73 (15) "Attendant" means a self-employed individual
74 who is trained to perform attendant care services and
75 who works as an independent contractor.

§18-10A-4a. Attendant care services.

1 The purpose of this section is to declare the intent of
2 the state to enable severely physically disabled adults to
3 enter or continue in the workforce, to enhance the
4 opportunities for disabled individuals to participate
5 fully in society through self-fulfillment and economic

6 independence.

7 The state board, through the division, shall administer
8 the provision of attendant care services as a separate
9 and distinct program to any severely physically disabled
10 adult who is present in the state at the time of filing
11 their application. The division may administer the
12 program or may enter into a contract with a private or
13 public organization to administer and operate the
14 program. If the program is administered by the
15 division, the funds shall be used as payments for
16 attendant care services, evaluations, attendant manage-
17 ment training and administrative costs. If the division
18 enters into a contract with a private or public organ-
19 ization, the private or public organization may use the
20 funds as payments for attendant care services, evalua-
21 tions, attendant management training and for reasona-
22 ble administrative costs. The administrative costs
23 allowed under the contract shall be negotiated and
24 approved by the director. The division shall establish a
25 waiting list of eligible disabled individuals if sufficient
26 funds are not available under the program. Determina-
27 tion will be made by a certified evaluation unit that such
28 adult needs fourteen or more hours of attendant care per
29 week: *Provided*, That the severely physically disabled
30 adult is eighteen years of age or older, is employed or
31 will be ready for employment within six months of the
32 time application for services is made and has a total
33 income of no more than thirty thousand dollars annu-
34 ally. The maximum income allowable will be recalcu-
35 lated each year based on changes in the consumer price
36 index. The eligible adult shall be reevaluated by a
37 certified evaluation unit at the direction of the division
38 at least once every two years to determine their
39 continuing need for attendant care services. The eligible
40 adult is responsible for hiring, firing and supervising
41 his or her attendant. Any subsidy received under the
42 provisions of this section for the purpose of providing
43 attendant care services shall not be considered income
44 to the severely disabled person for any purpose to the
45 extent permitted by federal law and regulations (IRS
46 Act of 1954) but shall supplement any other aid for
47 which the adult is eligible.

48 The division is responsible for accepting applications
49 for attendant care services from severely physically
50 disabled adults and making determinations of eligibil-
51 ity. The division shall provide for certifying evaluation
52 units and shall make determination regarding certifica-
53 tion for each evaluation unit which makes application.

54 The cost of evaluation fees, training of both attendants
55 and eligible adults in the management of attendants and
56 provision of attendant care services shall be borne by the
57 division from funds allocated for this program.

58 The division shall acquire from a certified evaluation
59 unit an evaluation of the attendant care needs for each
60 applicant. Within thirty days of the time that any
61 application for attendant care services is filed, the
62 applicant shall be notified that arrangements have been
63 made for the applicant to be evaluated by a certified
64 evaluation unit. Based upon the evaluator's information,
65 the division shall develop a plan for each eligible
66 applicant that shall include the amount of attendant
67 care time needed per week and an estimate of the length
68 of time the attendant care services will be needed.
69 Notice shall be given to the applicant and the evaluator
70 as soon as a decision has been made regarding the
71 eligibility of each applicant. If the recommendations of
72 the certified evaluation unit are not followed, the
73 division shall include the reasons for reaching its
74 decision in the notice sent to the applicant and evaluator.

75 The division shall promulgate policies and procedures
76 for the administration of this program. The division
77 shall adopt rules and regulations for full fiscal accoun-
78 tability for all appropriated funds and financial
79 assistance shall be given in accordance with a sliding
80 payment scale established by the division. The division
81 shall also establish a consumer advisory committee for
82 the purpose of advising on policies and procedures and
83 related matters involved in administration of the
84 program.

85 The division shall be responsible for establishing an
86 appeals procedure for those applicants who have been
87 denied attendant care services and for informing all

88 applicants of their right to appeal a decision of the
89 division.

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

[Signature]
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Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

[Signature]
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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within *approved* this the *28th*
May day of, 1986.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/22/86

Time 3:28 p.m.

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