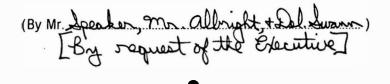


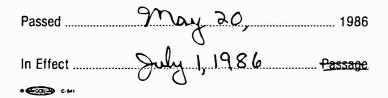
WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1986

ENROLLED

HOUSE BILL No. 102





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 vocational3 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 has13 a substantial employment handicap.

(6) "Vocational rehabilitation" and "vocational rehabil-14 itation services" means any services, provided directly 15 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.

(7) "Rehabilitation training" means all necessary
training provided to a disabled individual to compensate
for his employment handicap including, but not limited
to, manual, preconditioning, prevocational, vocational,
and supplementary training and training provided for
the purpose of achieving broader or more remunerative
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 governmen49 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 bladder65 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.

The division is responsible for accepting applications for attendant care services from severely physically disabled adults and making determinations of eligibility. The division shall provide for certifying evaluation units and shall make determination regarding certification for each evaluation unit which makes application.

The cost of evaluation fees, training of both attendants
and eligible adults in the management of attendants and
provision of attendant care services shall be borne by the
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.

The division shall be responsible for establishing an appeals procedure for those applicants who have been denied attendant care services and for informing all Enr. H. B. 102]

88 applicants of their right to appeal a decision of the89 division.

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

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Originating in the House.

Takes effect July 1, 1986.

Clerk of the Senate

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President of the Senate

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this the 28Th The within, 1986. day of Governor® GCU C-641

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GOVERNOR Date 5/22/86 3: -8 Time _

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