WEST VIRGINIA CODE CHAPTER 18 ARTICLE 10A

WV Legislature

§18-10A-1. Definitions.

As used in this article and §18-10B-1 et seq. of this code:

(1) "State board" means the Secretary of the Department of Commerce, or where required by federal law, the board, commission or council designated by the Secretary of the Department of Commerce to oversee certain functions of the Division of Rehabilitation Services. All references in this code to the state board of vocational education, except where the context clearly indicates the provision of vocational education to other than disabled individuals, means the state board defined by this subsection.

(2) "Division" means the division of vocational rehabilitation established by this article.

(3) "Director" means the director of the division of vocational rehabilitation.

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

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

(6) "Vocational rehabilitation" and "vocational rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his or her employment handicap and to enable him or her to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, attendant care services, physical restoration, transportation, occupational licenses, occupational tools and equipment, including motor vehicles, maintenance, and training books and materials.

(7) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his or her 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.

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

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

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(10) “Occupational licenses” means any license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(11) “Maintenance” means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(12) “Regulations” means regulations made by the director with the approval of the secretary of the Department of Commerce or the state board.

(13) “Attendant care evaluation unit” means any agency certified by the division of vocational rehabilitation that employs a qualified evaluator to provide evaluations and attendant referrals such as the centers for independent living, the West Virginia Rehabilitation Center and any other unit approved by the division.

(14) “Attendant care services” means services which include, but are not limited to:

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

(b) Dressing;

(c) Ambulation;

(d) Meal preparation and consumption;

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

(f) Bathing and grooming;

(g) Housecleaning and laundry; and

(h) Any other similar activity of daily living.

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

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§18-10A-2. Division of Rehabilitation Services.

(a) The Division of Rehabilitation Services is transferred to the Department of Commerce created in §5F-1-1 et seq. of this code. The secretary shall appoint any board, commission, or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and the boards, commissions or councils as he or she is required by federal law to appoint are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

(b) References in this article or §18-10B-1 et seq. of this code to the state Board of Vocational Education, the state Board of Rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities mean the Secretary of Commerce. All references in the code to the Division of Vocational Rehabilitation mean the Division of Rehabilitation Services and all references to the Director of the Division of Vocational Rehabilitation means the Director of the Division of Rehabilitation Services.

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§18-10A-2a. Rehabilitation teachers.

(a) Notwithstanding any other provision of this code to the contrary, beginning July 1, 2012, rehabilitation teachers shall be paid at the equivalent rate of pay of teachers, pursuant to section two, article four, chapter eighteen-a of this code. Rehabilitation teachers shall be paid outside the public school support plan, defined in section one, article nine-a of this chapter, and shall receive the equivalent of the salary supplement paid to teachers employed by the county board within the county where the administrative headquarters of the division are located, pursuant to section five-a, article four, chapter eighteen-a of this code.

(b) For purposes of this section, the following words shall be construed as follows:

(1) "Rehabilitation teacher" means any person employed by the division and who meets the certification requirements of section two-a, article three, chapter eighteen-a of this code, or who has been certified to teach by a state or nationally recognized organization, as approved by the office of the secretary of education and the arts. The teachers shall maintain current certification in their teaching areas in order to remain employed and may teach only in the areas in which they are certified: Provided, That teachers who were employed on or before April 1, 1995, are exempt from the following requirements:

(A) Certification pursuant to section two-a, article three, chapter eighteen-a of this code;

(B) Maintenance of current certification in their teaching areas in order to remain employed; and

(C) Teaching only in the areas in which they are certified.

(2) "Equivalent rate of pay" means an annualized rate based on a two hundred forty-day teaching schedule and includes pay for vacation and legal state holidays.

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§18-10A-3. Director of division of vocational rehabilitation; powers and duties.

The division shall be administered, under the general supervision and direction of the Secretary of the Department of Commerce or, if required by federal law his or her designated state board, by a director appointed by the secretary, or if required by federal law his or her designated state board in accordance with established personnel standards and on the basis of his or her education, training, experience, and demonstrated ability.

In carrying out his or her duties under this article, the director shall:

(1) Appoint such personnel as he or she considers necessary for the efficient performance of the functions of the division.

(2) Establish a merit system of personnel management, or in lieu thereof, avail himself or herself of the services of the state merit system upon payment of a fair share of the expenses of the operation of the system.

(3) Make regulations governing the protection of records and confidential information; the manner and form of filing applications for vocational rehabilitation services, eligibility therefor, and investigation and determination thereof; procedures for fair hearings; and such other matters as may be necessary or desirable in accomplishing the purposes of this article.

(4) Have the authority to establish and operate a staff development program for the employees of the division and may, in furtherance of such a program, and utilizing any funds appropriated or made available, for such purpose, pay to the employees compensation or expenses, or both, while the employees are pursuing approved training courses or academic studies for the purpose of becoming better equipped for their employment in the division; the staff development program shall be conducted subject to appropriate rules as adopted by the director and approved by the state board: Provided, That these rules shall include reasonable provisions for the return of any employee, receiving the benefits of such training, for a reasonable period of duty, or for reimbursement to the state for expenditures incurred on behalf of the training of such employee.

(5) Establish appropriate subordinate administrative units within the division.

(6) Prepare and submit to the Secretary of the Department of Commerce or his or her designated state board annual reports of activities and expenditures and, prior to each regular session of the Legislature, estimates of sums required for carrying out the provisions of this article and estimates of the amounts to be made available for this purpose from all sources.

(7) Make requisition for disbursement, in accordance with regulations of the funds available for vocational rehabilitation purposes.

(8) Take such other action as may be determined necessary or appropriate to carry out the

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purposes of this article.

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§18-10A-4. Vocational rehabilitation services.

Except as otherwise provided by law the division shall provide vocational rehabilitation services to disabled individuals determined by the director to be eligible therefor, and for this purpose the division is authorized among other things to:

(1) Cooperate with other departments, agencies and institutions, both public and private, in providing for the vocational rehabilitation of disabled individuals, in studying the problems involved therein, and in establishing, developing and providing, in conformity with the provisions of this article, such programs, facilities and services as may be necessary or desirable.

(2) Enter into reciprocal agreements with any other state to provide for the vocational rehabilitation of residents of such state.

(3) Conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals.

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§18-10A-4a. Attendant care services.

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

The division shall administer the provision of attendant care services as a separate and distinct program to any severely physically disabled adult who is present in the state at the time of filing their application. The division may administer the program or may enter into a contract with a private or public organization to administer and operate the program. If the program is administered by the division, the funds shall be used as payments for attendant care services, evaluations, attendant management training and administrative costs. If the division enters into a contract with a private or public organization, the private or public organization may use the funds as payments for attendant care services, evaluations, attendant management training and for reasonable administrative costs. The administrative costs allowed under the contract shall be negotiated and approved by the director. The division shall establish a waiting list of eligible disabled individuals if sufficient funds are not available under the program. Determination will be made by a certified evaluation unit that such adult needs fourteen or more hours of attendant care per week: Provided, That the severely physically disabled adult is eighteen years of age or older, is employed or will be ready for employment within six months of the time application for services is made and has a total income of no more than $30,000 annually. The maximum income allowable will be recalculated each year based on changes in the consumer price index. The eligible adult shall be reevaluated by a certified evaluation unit at the direction of the division at least once every two years to determine their continuing need for attendant care services. The eligible adult is responsible for hiring, firing and supervising his or her attendant. Any subsidy received under the provisions of this section for the purpose of providing attendant care services shall not be considered income to the severely disabled person for any purpose to the extent permitted by federal law and regulations (IRS Act of 1954) but shall supplement any other aid for 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.

The division shall acquire from a certified evaluation unit an evaluation of the attendant care needs for each applicant. Within thirty days of the time that any application for attendant care services is filed, the applicant shall be notified that arrangements have been made for the applicant to be evaluated by a certified evaluation unit. Based upon the evaluator's

information, the division shall develop a plan for each eligible applicant that shall include the amount of attendant care time needed per week and an estimate of the length of time the attendant care services will be needed. Notice shall be given to the applicant and the evaluator as soon as a decision has been made regarding the eligibility of each applicant. If the recommendations of the certified evaluation unit are not followed, the division shall include the reasons for reaching its decision in the notice sent to the applicant and evaluator.

The division shall promulgate policies and procedures for the administration of this program. The division shall adopt rules for full fiscal accountability for all appropriated funds and financial assistance shall be given in accordance with a sliding payment scale established by the division. The division shall also establish a consumer advisory committee for the purpose of advising on policies and procedures and related matters involved in administration of the 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 applicants of their right to appeal a decision of the division.

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§18-10A-5. Cooperation with federal government.

The division, or if required by federal law the board, commission or council appointed by the secretary of the Department of Education and the arts to oversee certain functions of the division, shall make agreements or plans to cooperate with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and to this end may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

WV Legislature

§18-10A-6. Custody and disbursement of vocational rehabilitation funds.

The State Treasurer is hereby designated as the custodian of all funds received from the federal government under any federal statutes pertaining to vocational rehabilitation. The State Treasurer shall make disbursements from such funds and from all state funds available for vocational rehabilitation purposes on warrants of the State Auditor, requisitioned as provided in section three of this article.

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§18-10A-6a. West Virginia Rehabilitation Services Special Account; expenditures.

(a) There is hereby established in the State Treasury a separate account which shall be designated the "West Virginia Rehabilitation Services Special Account". The director of rehabilitation services shall deposit promptly into the account all fees received for services provided by the West Virginia Rehabilitation Center from whatever source, including the federal government, state government or from other third-party payers or personal payments.

(b) A five-year West Virginia rehabilitation services long-range plan shall be developed by the director and shall be adopted by the Secretary of Commerce. The West Virginia rehabilitation services' long-range plan shall be updated and revised at least every two years.

(c) The director may expend the moneys deposited in the West Virginia Rehabilitation Services Special Account in accordance with federal laws and regulations and with the laws of this state necessary for the development of the five-year long-range plan and subsequent revisions.

(d) The director may expend the moneys deposited in the West Virginia Rehabilitation Services Special Account as provided in the long-range plan at such times and in such amounts as the director determines to be necessary for the purpose of maintaining or improving the delivery of rehabilitation services: Provided, That during the budget preparation period which occurs prior to the convening of the Legislature, the director shall submit for inclusion in the executive budget document and budget bill his or her recommended capital expenditures, recommended priorities, estimated costs, and request for appropriations for maintaining or improving the delivery of vocational rehabilitation services.

(e) The director shall make an annual report to the Legislature on the status of the West Virginia Rehabilitation Services Special Account, including the previous year's expenditures and projected expenditures for the next year.

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§18-10A-7. Gifts.

The director is hereby authorized and empowered to accept and use gifts made unconditionally by will or otherwise for carrying out the purposes of this article. Gifts made under such conditions as in the judgment of the state board are proper and consistent with the provisions of this article may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

WV Legislature

§18-10A-8. Eligibility for vocational rehabilitation.

Vocational rehabilitation services shall be provided to any disabled individual who is present in the state at the time of filing his application therefor, if the director after full investigation shall determine that his rehabilitation can be satisfactorily achieved. Such services shall also be provided to any person who is eligible therefor under the terms of an agreement with another state or with the federal government.

Except as otherwise provided by law or as specified in an agreement with the federal government with respect to classes of individuals certified to the state board thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(1) Physical restoration.

(2) Transportation, for any other purpose than that of determining the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary.

(3) Occupational licenses.

(4) Occupational tools, equipment, initial stocks and supplies, books and training material; the title to any or all of which may be conveyed to the individual.

(5) Maintenance.

The rights of a disabled individual under the provisions of this article shall not be transferable or assignable at law or in equity.

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§18-10A-9. Grievance hearings.

Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the division shall be entitled, in accordance with regulations, to a fair hearing.

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§18-10A-10. Misuse of vocational rehabilitation lists and records; penalty.

It shall be unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations, for any person or persons to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, any list of, or names of, or any information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the state or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof shall be fined not less than $50 nor more than $500, or imprisoned for not less than thirty days nor more than ninety days, or both such fine and imprisonment, in the discretion of the court.

WV Legislature

§18-10A-11.

Repealed.

Acts, 2009 Reg. Sess., Ch. 35.

WV Legislature

§18-10A-12. Vocational evaluation and work adjustment program for disadvantaged individuals.

The division, under the direction of any federally mandated board, commission, or council appointed by the Secretary of the Department of Commerce, is authorized and directed to cooperate with the federal government in providing vocational evaluation and work adjustment services to disadvantaged individuals.

"Vocational evaluation and work adjustment services" include, as appropriate in each case, such services as:

(a) A preliminary diagnostic study to determine that the individual is disadvantaged, has an employment handicap, and that services are needed;

(b) A thorough diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent data helpful in determining the nature and scope of services needed;

(c) Services to appraise the individual's patterns of work behavior and ability to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(d) Any other goods or services provided to a disadvantaged individual, determined (in accordance with regulations of the federal government) to be necessary for, and which are provided for the purpose of, ascertaining the nature of the handicap to employment and whether it may reasonably be expected the individual can benefit from vocational rehabilitation services or other services available to disadvantaged individuals;

(e) Outreach, referral, and advocacy; and

(f) The administration of these evaluation and work adjustment services.

As used in this section, the term "disadvantaged individuals" means: (1) Disabled individuals as defined in §18-10A-1(5) of this code; (2) individuals disadvantaged by reason of their youth or advanced age, low educational attainments, ethnic or cultural factors, prison or delinquency records, or other conditions which constitute a barrier to employment; and (3) other members of their families when the provision of vocational rehabilitation services to family members is necessary for the rehabilitation of the individual described in subdivision (1) or (2) above.

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§18-10A-12a. Workers' compensation for clients participating in unpaid work-based training programs.

(a) The workers' compensation commission shall create a classification and calculate a base premium tax rate for clients of the Division of Rehabilitation Services participating in unpaid work-based training programs within integrated community-based settings. The workers' compensation commission shall report to the Division of Rehabilitation Services:

(1) The amount of the base premium tax rate for the class; and

(2) The hourly wages per client to be used to provide the minimum weekly benefits required by section six, article four, chapter twenty-three of this code.

(b) The base premium tax rate reported annually to the Division of Rehabilitation Services by the workers' compensation commission shall not be effective until July 1, and shall remain in effect through the last day of the next June.

(c) The Division of Rehabilitation Services and the participating entity shall be considered the joint employers of record of the clients while the clients are participating in unpaid work-based training programs in integrated community-based settings: Provided, That the participating entity shall not be held responsible for any liability due the workers' compensation commission. The clients shall be considered to be paid the amount of wages sufficient to provide the minimum workers' compensation weekly benefits required by section six, article four, chapter twenty-three of this code.

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§18-10A-13. Social security disability determination section.

The disability determination section of the division of vocational rehabilitation created pursuant to the provisions of section three, article ten-a, chapter eighteen of this code, is hereby continued and shall be named the social security disability determination section.

The social security disability determination section shall be subject to chapter twenty-nine-a of this code.

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§18-10A-14. Duties of assistant director of social security disability determination section.

In addition to duties imposed by other federal and state laws, the assistant director shall:

(1) Ensure that each client of the agency who is denied benefits is

(a) Advised of his right to appeal an agency decision to an administrative law judge,

(b) Advised of proper procedures for filing and pursuing an appeal, and

(c) Encouraged to exercise his right of appeal when he feels a decision was made in error and is unjust;

(2) Promulgate rules establishing criteria for granting promotion and salary increases which are to be based on merit;

(3) Prepare and submit to the state board, and the social security disability board, an annual report showing compliance and noncompliance with the provisions of this section. A copy of the report shall be filed with the Secretary of State's office to be made available for public inspection;

(4) Ensure that physicians evaluating medical impairments are qualified by experience and educational specialty to make proper medical judgments on the medical impairments they are assigned to evaluate; and

(5) Ensure that the evaluation of the claimant's personal physician is given due consideration in the disability determination process.

WV Legislature

§18-10A-15. Establishment of a central registry of traumatic head injury; acute care facility required to report head injury.

(a) The Center for Excellence in Disabilities shall maintain a central registry of persons who sustain severe head injury other than through disease, whether or not permanent disability results, in order to facilitate the provision of appropriate services through referral and collaboration with the division and other state agencies for such persons.

(b) The current acute care facility shall report to the Center for Excellence in Disabilities by the most expeditious means within seven days after identification of any person sustaining such an injury. The report shall contain the name and residence of the person and the name of the current acute care facility.

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