WEST VIRGINIA CODE CHAPTER 9 ARTICLE 9

WV Legislature

§9-9-1. Short title.

This article may be cited as the "WV Works Act".

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§9-9-2. Legislative findings; purpose.

(a) The Legislature hereby finds and declares that:

(1) The entitlement of any person to receive federal-state cash assistance is hereby discontinued;

(2) At-risk families are capable of becoming self-supporting;

(3) An assistance program should both expect and assist a parent and caretaker-relatives in at-risk families to support their dependent children and children for which they are caretakers;

(4) Every parent or caretaker-relative can exhibit responsible patterns of behavior so as to be a positive role model;

(5) Every parent or caretaker-relative who receives cash assistance has a responsibility to participate in an activity to help them prepare for, obtain and maintain gainful employment;

(6) For a parent or caretaker-relative who receives cash assistance and for whom full-time work is not feasible, participation in some activity is required to further himself or herself, his or her family or his or her community;

(7) The state should promote the value of work and the capabilities of individuals;

(8) Job development efforts should enhance the employment opportunities of participants;

(9) Education is the key to achieving and maintaining life-long self-sufficiency; and

(10) An assistance program should be structured to achieve a clear set of outcomes; deliver services in an expedient, effective and efficient manner; and maximize community support for participants.

(b) The goals of the program are to achieve more efficient and effective use of public assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance programs to emphasize employment and personal responsibility. The success of the program is to be evaluated on the following activities, including, but not limited to, the following: Job entry, job retention, federal work participation requirements and completion of educational activities.

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§9-9-3. Definitions.

In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent, work eligible individuals or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) "Caretaker-relative" means grandparents or other nonparental caretakers not included in the assistance group or receiving cash assistance directly;

(d) "Cash assistance" means temporary assistance for needy families;

(e) "Challenge" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(f) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

(g) "Department" means the state Department of Human Services;

(h) "Education and training" means hours spent regularly attending and preparing for classes in any approved course of schooling or training;

(i) "Family assessments" means evaluation of the following: Work skills, prior work experience, employability, education and challenges to becoming self-sufficient such as mental health and physical health issues along with lack of transportation and child care;

(j) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: *Provided*, That income does not include:

(1) Supplemental security income paid to any member or members of the at-risk family;

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(2) Earnings of minor children;

(3) Payments received from earned income tax credit or tax refunds;

(4) Earnings deposited in an individual development account approved by the department;

(5) Any educational grant or scholarship income regardless of source; or

(6) Any moneys specifically excluded from countable income by federal law;

(k) "Minor child head of household" means an emancipated minor under the age of eighteen years;

(l) "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or state law from receiving cash assistance;

(m) "Personal responsibility contract" means a written agreement entered into by the department and a beneficiary for purposes of participation in the West Virginia Works Program;

(n) "Secretary" means the Secretary of the Department of Human Services;

(o) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the department for the creation and maintenance of the employment position;

(p) "Support services" includes, but is not limited to, the following services: Child care; Medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(q) "Temporary assistance to needy families" is the federal program funded under Part A, Title IV of the Social Security Act, codified at 42 U.S.C. §601, et. seq.;

(r) "Transitional assistance" may include medical assistance, food stamp assistance, child care and supportive services as defined by the secretary and as funding permits;

(s) "Two-parent family" means two parents with a common child residing in the same household and included in a common West Virginia Works grant payment or, two parents with a common child residing in the same home and one or both of the parents are "work eligible individuals", as that term is defined in this section, but are excluded from the West Virginia Works payments unless the exclusion is due to an exemption as provided in section eight of this article.

(t) "Unsubsidized employment" means employment with earnings provided by an employer

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who does not receive a subsidy from the department for the creation and maintenance of the employment position;

(u) "Vocational educational training" means organized educational programs, not to exceed twelve months for any individual, that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advance degree;

(v) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development and education and training;

(w) "Work eligible individual" means an adult or minor child head-of-household receiving assistance under the West Virginia Works Program or a nonrecipient parent living with a child receiving the assistance; and

(x) "Work experience" means a publicly assisted work activity, including work associated with the refurbishing of publicly assisted housing, performed in return for program benefits that provide general skills, training, knowledge and work habits necessary to obtain employment. This activity must be supervised daily and on an ongoing basis by an employer, work site sponsor or other responsible party.

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§9-9-4. Authorization for program.

(a) The secretary shall conduct the WV works program in accordance with this article and any applicable regulations promulgated by the secretary of the federal department of health and human services in accordance with federal block-grant funding or similar federal funding stream. This program shall expend only the funds appropriated by the Legislature to establish and operate the program or any other funds available to the program; establish administrative due process procedures for reduction or termination proceedings; and implement any other procedures necessary to accomplish the purpose of this article.

(b) The WV works program authorized pursuant to this article does not create an entitlement to that program or any services offered within that program, unless entitlement is created pursuant to a federal law or regulation. The WV works program and each component of that program established by this article or the expansion of any component established pursuant to federal law or regulation is subject to the annual appropriation of funds by the Legislature.

(c) Copies of all rules proposed pursuant to authority granted in this article by the secretary shall be filed with the Legislative Oversight commission on health and human resources accountability established pursuant to article twenty-nine-e, chapter sixteen of this code.

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§9-9-5. WV works program fund.

There is continued a special account within the state Treasury to be known as the "WV Works Program Fund". Expenditures from the fund shall be used exclusively to meet the necessary expenditures of the program, including wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program. Moneys paid into the account shall be from specific annual appropriations of funds by the Legislature.

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§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance and work eligible individuals shall participate in the West Virginia Works Program in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined through legislative rules established by the secretary.

(b) Any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the West Virginia Works Program.

(c) Support services other than cash assistance through the West Virginia Works Program may be provided to at-risk families to assist in meeting the work requirements or to eliminate the need for cash assistance.

(d) Cash assistance through the West Virginia Works Program may be provided to an at-risk family if the combined family income, as defined in section three of this article, is below the income test levels established by the department, subject to the following:

(1) Any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group;

(2) Within the limits of funds appropriated therefor, an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in an amount of $100 or less; and

(3) An at-risk family shall receive an additional cash assistance benefit in the amount of $25 regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk family, as allowed by federal law.

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§9-9-7. Work requirements.

(a) Unless otherwise exempted by the provisions of section eight of this article, the West Virginia Works Program shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for at least the minimum number of hours per week required by federal law under the work participation rate requirements for all families in order to receive any form of cash assistance. Participation in any education or training activity, as defined in section three of this article, shall be counted toward satisfaction of the work requirement imposed by this section to the extent permissible under federal law and regulation: Provided, That the participant demonstrates adequate progress toward completion of the program. In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services.

(b) The department and representatives of the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education shall develop and implement a plan to use and expand the programs available at the state's community and technical colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to become enrolled in vocational-educational training not to exceed twelve months with respect to any individual to meet the work requirements of this section. Vocational-educational training shall be supervised daily and on an ongoing basis.

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§9-9-8. Exemptions.

The secretary shall establish by rule categories of persons exempt, but the exemption applies only to the work requirements of the program: Provided, That a person who is exempt from the work requirements may nevertheless participate voluntarily in work activities. The categories of exemptions are limited to the following:

(1) Undocumented aliens and aliens under the five-year ban;

(2) Parents, or at state option on a case-by-case basis, anyone receiving supplemental security income;

(3) A parent who is providing medically necessary care for a disabled family member who resides in the home and is not a full-time student;

(4) Minor parents who are not head of household (spouses of the head of household); and

(5) Grandparents and other nonparental caretakers.

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§9-9-9. Personal responsibility contract.

(a)(1) Every eligible adult beneficiary and work eligible individual shall participate in a program orientation, family assessments and in the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the program time limits, support services available, work requirements and family assessments.

(2) The participant's contract shall include the following requirements:

(A) That the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for his or her dependent child or children, including routine examinations and immunizations;

(B) Assurance of school attendance for school-age children under his or her care;

(C) Assurance of properly supervised child care, including after-school care;

(D) Establishment of paternity or active pursuit of child support, or both, if applicable and if considered necessary; and

(E) Nutrition or other counseling, parenting or family-planning classes.

(3) If the participant is a teenage parent, he or she may work, but the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and

(C) Live at home with his or her parent or guardian or in some other adult-supervised arrangements if he or she is an unemancipated minor.

(4) If the participant is under the age of twenty years and does not have a high school diploma or its equivalent, the contract shall include requirements to participate in mandatory education or training which, if the participant is unemployed, may include a return to high school, with satisfactory scholastic progress required.

(b) In order to receive cash assistance, the participant shall enter into a personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the participant and family members are ineligible to receive cash assistance: Provided, That a participant who alleges that the terms of a personal responsibility contract are inappropriate based on his or her individual circumstances may request and shall be provided a fair and impartial hearing in accordance with administrative procedures established by the department and due process of law. A participant who signs a personal

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responsibility contract or complies with a personal responsibility contract does not waive his or her right to request and receive a hearing under this subsection.

(c) Personal responsibility contracts shall be drafted by the department on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated periodically, but not less than on an annual basis; and, in the discretion of the department, amended on a periodic basis.

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§9-9-10. Participation limitation; exceptions.

The length of time a participant may receive cash assistance through the WV works program may not exceed a period longer than sixty months, except in circumstances as defined by the secretary.

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§9-9-11. Breach of contract; notice; sanctions.

(a) The department may terminate cash assistance benefits to an at-risk family if it finds any of the following:

(1) Fraud or deception by the beneficiary in applying for or receiving program benefits;

(2) A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract and any amendments or addenda to the contract; or

(3) A violation by the beneficiary of any provision of the personal responsibility contract or any amendments or addenda to the contract, this article, or any rule or policy promulgated by the secretary pursuant to this article.

(b) In the event the department determines that benefits received by the beneficiary are subject to reduction or termination, written notice of the reduction or termination and the reason for the reduction or termination shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last-known address at least thirteen days prior to the termination or reduction. The notice shall state the action being taken by the department and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the department and due process of law.

(c) In any hearing conducted pursuant to the provisions of this section, the beneficiary has the burden of proving that his or her benefits were improperly reduced or terminated and shall bear his or her own costs, including attorneys' fees.

(d) The secretary shall promulgate emergency rules and propose for legislative promulgation legislative rules, pursuant to article three, chapter twenty-nine-a of this code, setting forth the schedule of sanctions to be imposed when a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any amendment or addendum to the contract, or any applicable department rule. In developing these rules, the secretary is directed to make those sanctions graduated and sufficiently stringent, when compared to those of contiguous states, so as to discourage persons from moving from such states to this state to take advantage of lesser sanctions being imposed for the same or similar violations by the secretary. The secretary shall also promulgate legislative rules setting forth what constitutes de minimis violations and those violations subject to sanctions and maximum penalties.

(e) The department shall provide an annual report regarding the sanctions relating to the Temporary Assistance to Needy Families program , including their relative stringency when compared to those of contiguous states, frequency of imposition and the overall success of those sanctions at deterring individuals from taking advantage of the Temporary Assistance to Needy Families program and accomplishing the overall purposes of the program, to the Legislative Oversight Commission on Health and Human Resources Accountability on

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January 1 of each year. Copies of that report shall also be furnished to the President of the Senate and Speaker of the House.

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§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.

(a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from the state, the secretary may issue one-time diversionary assistance allowances to families in an amount not to exceed the equivalent of three months of cash assistance in order to enable the families to become immediately self-supporting.

(b) The secretary shall establish by rule the standards to be considered in making diversionary assistance allowances.

(c) Nothing in this section may be construed to require that the department or any assistance issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter forty-six-a of this code.

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§9-9-13. Subsidized employment.

(a) To the extent that resources are available, an employer may be paid a subsidy by the department to employ a parent or caretaker-relative of an at-risk family if the employer agrees to hire the WV works program participant at the end of the subsidized period. If the employer does not hire the participant at the end of the subsidized period, the program may not use that employer for subsidized employment for the next twelve months.

(b) If the department determines that an employer has demonstrated a pattern of discharging employees hired pursuant to the provisions of this section subsequent to the expiration of the subsidized period without good cause, the employer shall no longer be eligible for participation in the subsidized employment program for a period to be determined by the department.

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§9-9-14. Transitional assistance.

The WV works program may provide transitional assistance in the form of supportive services.

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§9-9-15. Interagency coordination.

The Legislature encourages the development of a system of coordinated services, shared information and streamlined application procedures between the program and the other agencies within the department to implement the provisions of this article. The secretary shall require the coordination of activities between the program and the following agencies:

(a) The child support enforcement division for the purpose of establishing paternity, promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job search assistance and determining eligibility for cash assistance and support services;

(b) The bureau of public health for the purpose of determining appropriate immunization schedules, delivery systems and verification procedures; and

(c) The bureau of medical services for the purpose of reporting eligibility for medical assistance and transitional benefits.

The secretary may require the coordination of procedures and services with any other agency he or she considers necessary to implement this program: Provided, That all agencies coordinating services with the department shall, when provided with access to department records or information, abide by state and federal confidentiality requirements including the provisions of section twenty of this article.

The secretary shall propose any rules, including emergency rules, necessary for the coordination of various agency activities in the implementation of this section.

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§9-9-16. Intergovernmental coordination.

(a) The commissioner of the Bureau of Employment Programs and the superintendent of the Department of Education shall assist the secretary in the establishment of the WV works program. Before implementation of this program, each department shall address in its respective plan the method in which its resources will be devoted to facilitate the identification of or delivery of services for participants and shall coordinate its respective programs with the department in the provision of services to participants and their families. Each county board of education shall designate a person to coordinate with the local Department of Human Services office the board's services to participant families and that person shall work to achieve coordination at the local level.

(b) The secretary and the superintendent shall develop a plan for program implementation to occur with the use of existing state facilities and county transportation systems within the project areas whenever practicable. This agreement shall include, but not be limited to, the use of buildings, grounds and buses. Whenever possible, the supportive services, education and training programs should be offered at the existing school facilities.

(c) The commissioner shall give priority to participants of the WV works program within the various programs of the Bureau of Employment Programs. The secretary and the commissioner shall develop reporting and monitoring mechanisms between their respective agencies.

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§9-9-17. Public-private partnerships.

The secretary may enter into agreements with any private, nonprofit, charitable or religious organizations to promote the development of the community support services necessary for the effective implementation of this program, including cooperative arrangements with private employers of former program participants for the purpose of obtaining and maintaining employer-based family health insurance coverage for former participants and their spouses and dependent children through direct payments to the employers out of funds appropriated for the cooperative agreements.

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§9-9-18. Relationship with other law.

If any provision of this article conflicts with any other provision of this code or rules, the provisions of this article shall supersede such provisions: Provided, That the provisions of this article shall not supersede any provisions which are required or mandated by federal law.

Any reference in this code or rules to "aid to families with dependent children" means "temporary assistance for needy families" or any successor state program funded under Part A, Title IV of the Social Security Act.

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§9-9-19. Legislative oversight.

The Legislative Oversight commission on health and human resources accountability is charged with immediate and ongoing oversight of the program created by this article. This commission shall study, review and examine the work of the program, the department and its staff; study, review and examine all rules proposed by the department; and monitor the development and implementation of the WV works program. The commission shall review and make recommendations to the Legislature and the legislative rule-making review committee regarding any plan, policy or rule proposed by the secretary, the department or the program.

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§9-9-20. Confidentiality, fines and penalties.

(a) Except as otherwise provided in this code or rules, all records and information of the department regarding any beneficiary or beneficiary's family members, including food stamps, child support and Medicaid records, are confidential and shall not be released, except under the following circumstances:

(1) If permissible under state or federal rules or regulations;

(2) Upon the express written consent of the beneficiary or his or her legally authorized representative;

(3) Pursuant to an order of any court of record of this state or the United States based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section: Provided, That all confidential records and information presented to the court shall after review be sealed by the clerk and shall not be open to any person except upon order of the court upon good cause being shown for the confidential records and information to be opened; or

(4) To a department or division of the state or other entity, pursuant to the terms of an interagency or other agreement: Provided, That any agreement specifically references this section and extends its requirements for confidentiality to the other entity receiving the records or information, its agents and employees.

(b) Any person who knowingly and willfully releases or causes to be released the confidential records and information described in this section, except under the specific circumstances enumerated in this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in the county or regional jail for not more than six months, or both.

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§9-9-21. West Virginia Works Separate State College Program; eligibility; special revenue account.

(a) There is established the West Virginia Works Separate State College Program. The program shall provide funding for participants who are enrolled in post-secondary courses leading to a two- or four-year degree. There is created within the state Treasury a special revenue account to be known as the West Virginia Works Separate State College Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible adults attending post-secondary courses leading to a two- or four-year degree and who are not participating in vocational education training, as that term is defined in this article, shall be enrolled in the West Virginia Works Separate State College Program. Participants in the program shall not be required to engage in more than ten hours per week of federally defined work activities. The work, education and training requirements of this article are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. All other requirements of West Virginia Works apply to program administration for adults enrolled in the program.

(c) The Department of Human Services shall work with the Higher Education Policy Commission, as set forth in article one-b, chapter eighteen-b of this code, and the Council for Community and Technical College Education, as set forth in article two-b, chapter eighteen-b of this code, to develop and implement a plan to use and expend funds for the programs available at the state's community and technical colleges and colleges and universities to assist participants who are enrolled, or wish to become enrolled, in two- and four-year degree programs of post-secondary education to meet the work requirements of this article.

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§9-9-22. West Virginia Works Separate State Two-Parent Families Program.

(a) There is established the West Virginia Works Separate State Two-Parent Families Program. The program shall provide funding for participants who are a two-parent family as that term is defined in this article. There is created within the state Treasury a special revenue account to be known as the West Virginia Works Separate State Two-Parent Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible two parent families, as that term is defined in this article, shall enroll in the West Virginia Works Separate State Two-Parent Families Program. All requirements of West Virginia Works shall apply to program administration for two-parent families enrolled in the program.

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