WEST VIRGINIA LEGISLATURE
FIRST EXTRAORDINARY SESSION, 1986

ENROLLED

HOUSE BILL No. 102

(By Mr. Speaker, Mr. Albright, and Mr. T. B. Gunn)

[By request of the Executive]

Passed May 20, 1986

In Effect July 1, 1986
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 education.

3 (2) “Division” means the division of vocational rehabilitation established by this article.

4 (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 employment handicap and to enable him 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 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.
(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 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.

§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
The state board, through 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 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 thirty thousand dollars 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 and regulations 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within ______________ approved this the 25th day of ______________, 1986.

[Signature]
Governor