

**H. B. 3247**

(By Delegates Perdue and Williams)  
[Introduced February 21, 2011; referred to the  
Committee on Health and Human Resources then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9-4F-1, §9-4F-2, §9-4F-3, §9-4F-4, §9-4F-5 and §9-4F-6, all relating to community-based services and supports for individuals with disabilities; establishing the Community-Based Services Act; providing definitions for certain terms; defining the purpose of the Act; implementation of the Act; standards and requirements of the Department of Health and Human Resources to modify certain policies to improve access to community-based long-term care services; Legislative Oversight; and requiring legislative rules.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §9-4F-1, §9-4F-2, §9-4F-3, §9-4F-4, §9-4F-5 and §9-4F-6, all to read as follows:

1 **ARTICLE 4F. COMMUNITY-BASED SERVICES ACT.**

2 **§9-4F-1. Title.**

3 This article is known as and may be cited as the "Community-  
4 Based Services Act."

5 **§9-4F-2. Definitions.**

6 (a) "Community-based services and supports" means services and  
7 supports designated to assist the recipient in accomplishing  
8 activities of daily living, health maintenance tasks in the most  
9 integrated setting appropriate. These services and supports are  
10 furnished to a recipient through: Informal supports; Medicaid  
11 waiver programs; Medicaid personal care and Medicaid home health.

12 (b) "Service or Support Recipient" means the eligible  
13 individual who has a disability and is receiving long-term care  
14 supports under existing or new community-based supports or  
15 institutional care.

16 (c) "Department" means the Department of Health and Human  
17 Resources.

18 (d) "Institution" means nursing facility and intermediate care  
19 facility for persons with mentally challenged or other segregated  
20 and congregated facility providing long-term care services.

21 (e) "Long-Term Care Services" means diverse, integrated  
22 medical or nonmedical services provided over a sustained period of  
23 time to ensure maximum physical, mental and social functioning of  
24 the service or support recipient.

1 (f) "Legal Representative" means a person legally authorized  
2 to make decisions for the service or support recipient including,  
3 but not limited to, a conservator, guardian, power of attorney,  
4 medical power of attorney, or health care surrogate.

5 (g) "Most integrated setting" means the individual has  
6 opportunities to access and actively participate in a valued and  
7 meaningful way as a member of their community.

8 **§9-4F-3. Purpose.**

9 The intent of this legislation is to achieve the following  
10 goals:

11 (1) Assuring the implementation of Title II of the Americans  
12 with Disabilities Act as upheld by the United States Supreme Court  
13 in *Olmstead v. L.C.*;

14 (2) Respecting the right of all people who can be supported in  
15 their home and community regardless of severity of disability or  
16 age;

17 (3) Reducing the reliance on institutional care;

18 (4) Reducing the cost of publicly funded services and  
19 supports;

20 (5) Eliminating barriers that prevent or restrict the flexible  
21 use of Medicaid funds in the most integrated setting;

22 (6) Increasing access to community-based alternatives to  
23 institutional care;

24 (7) Ensuring continuous quality assurance and improvement in

1 providing community-based long-term care supports; and

2 (8) Ensuring that, as home and community based services are  
3 more fully developed, resources remain available to individuals who  
4 choose or need care in a long-term care facility.

5 **§9-4F-4. Implementation of the Community-Based Services Act.**

6 (a) The department shall design and implement enduring  
7 improvements to community-based supports to enable eligible service  
8 or support recipients to live and participate in a valued and  
9 meaningful way in community life, particularly with respect to  
10 individuals who:

11 (1) Reside in or are at-risk of admission to an institutional  
12 setting; and

13 (2) Would prefer to live in the community and could do so,  
14 provided they have the appropriate supports.

15 (b) The department shall utilize the Olmstead Council as the  
16 committee to assist in the planning, development, and  
17 implementation of community-based supports, including program  
18 standards, access, eligibility and quality assurance related to  
19 this act.

20 (c) The department shall identify and educate eligible  
21 individuals residing in institutional long-term care facilities.

22 (d) The department shall ensure that each individual  
23 identified has the opportunity to make an informed choice for  
24 community-based services as an alternative to institutional care.

1 (e) The department shall ensure to the maximum extent  
2 possible, a service or supports recipient or their legal  
3 representative shall be supported to design and manage his or her  
4 community-based supports in a self-directed manner preserving  
5 individual choice, control and dignity.

6 (f) The service or support recipient shall have due process  
7 rights through a responsive and efficient due process system.

8 **§9-4F-5. Standards and requirements.**

9 (a) The department shall modify methodology for funding long-  
10 term care supports to:

11 (1) Allow long-term care Medicaid funding for institutional  
12 care to be allocated in a flexible manner;

13 (2) Require long-term care Medicaid funding methodology to  
14 utilize a market-based approach that allows the service or support  
15 recipient to guide the allocation of funding through need and  
16 choice.

17 (b) The department shall eliminate the institutional bias in  
18 eligibility determination for specific community-based services.

19 (1) The department shall utilize a presumptive eligibility, or  
20 fast track eligibility process for Medicaid waiver programs. This  
21 will allow for immediate access to services as already permitted  
22 for alternative institutional programs.

23 (2) The department shall provide Medicaid personal care  
24 services to allow services in the natural community setting as

1 needed by the service or support recipient.

2 (3) The department shall provide benefits counseling  
3 (including alternative to institutional care) prior to any  
4 individual being admitted to an institutional setting.

5 (4) The department shall provide benefits counseling  
6 (including all alternatives to institutional care) on an annual  
7 basis to all individuals residing in an institutional setting.

8 (c) The department shall fund a statewide transition and  
9 diversion program to assist people in returning to or remaining in  
10 their home and community to avoid or delay institutionalization as  
11 resources permit.

12 **§9-4F-6. Legislative oversight.**

13 The department shall report to the Select Committee on PEIA,  
14 Seniors and Long-Term Care every three months concerning the  
15 progress of policy changes to eliminate institutional bias and  
16 status of those eligible individuals who choose to move from  
17 institutional facilities to community-based settings.

NOTE: The purpose of this bill is to ensure that the DHHR focuses on the home and community-based services as they make plans for the elderly and people with disabilities.

This article is new; therefore, it has been completely underscored.