

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 3104**

BY DELEGATES HOWELL AND IAQUINTA

[Originating in the Committee on Finance;

February 9, 2018.]



1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a  
2 new article, designated §9-10-1, §9-10-2, §9-10-3, §9-10-4, §9-10-5 and §9-10-6; to  
3 amend and reenact §18-10K-1 of said code; and to repeal §18-10K-2, §18-10K-3, §18-  
4 10K-4, §18-10K-5 and §18-10K-6 of said code, all relating to transferring administration of  
5 the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund to the  
6 Department of Health and Human Resources; abolishing the West Virginia Traumatic  
7 Brain and Spinal Cord Injury Rehabilitation Fund Board; transferring the powers, duties  
8 and records of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation  
9 Fund Board to the Department of Health and Human Resources; and transferring the  
10 powers and duties of the Division of Rehabilitation Services related to administering the  
11 West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund to the  
12 Department of Health and Human Resources.

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

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 10. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY**

#### **REHABILITATION FUND.**

##### **§9-10-1. Definitions.**

1 As used in this article, the term:

2 (1) "Secretary" means the Secretary of the West Virginia Department of Health and Human  
3 Resources or his or her designee.

4 (2) "Fund" means the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation  
5 Fund.

6 (3) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries  
7 caused by anoxia due to near drowning. "Traumatic brain injury" does not include brain  
8 dysfunction caused by congenital or degenerative disorders, nor birth trauma.

9           (4) “Spinal cord injury” means a traumatic injury to the spinal cord that results in a  
10 permanent loss of sensation and voluntary movement below the level of the lesion.

**§9-10-2. Fund continued under Department of Health and Human Resources.**

1           (a) The special revenue account in the State Treasury known as the “West Virginia  
2 Traumatic Brain and Spinal Cord Injury Rehabilitation Fund,” which was previously authorized by  
3 §18-10K-1 et seq. of this code, is continued.

4           (b) Effective July 1, 2018, all powers and duties of the West Virginia Traumatic Brain and  
5 Spinal Cord Injury Rehabilitation Fund Board are transferred to the Secretary.

6           (c) Effective July 1, 2018, all powers and duties of the West Virginia Division of  
7 Rehabilitation Services related to administration of the West Virginia Traumatic Brain and Spinal  
8 Cord Injury Rehabilitation Fund are transferred to the Secretary.

**§9-10-3. Administration of Fund; administrative fees; Fund use.**

1           (a) The West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund is  
2 subject to the annual appropriation of funds by the Legislature. The West Virginia Traumatic Brain  
3 and Spinal Cord Injury Rehabilitation Fund may receive any gifts, grants, contributions or other  
4 money from any source which is specifically designated for deposit in the Fund.

5           (b) All moneys collected, received and deposited into the State Treasury and credited to  
6 the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund shall be expended  
7 by the Secretary exclusively in accordance with the uses and criteria set forth in this article.  
8 Expenditures from this Fund for any other purposes are void.

9           (c) The Fund shall be administered by the Department of Health and Human Resources:  
10 Provided, That the Department may not charge a fee to administer the Fund.

11           (d) Nothing in this article may be construed to mandate funding for the Fund or to require  
12 any appropriation by the Legislature.

13           (e) Moneys in the Fund shall be used to pay for services that will increase opportunities  
14 for and enhance the achievement of functional independence, and a return to a productive lifestyle  
15 for individuals who have suffered a traumatic brain injury or a spinal cord injury.

16 (f) Services that are eligible for payment by the Fund shall include, but not be limited to:

17 (1) Case management;

18 (2) Rehabilitative therapies and services;

19 (3) Attendant care;

20 (4) Home accessibility modifications;

21 (5) Equipment necessary for activities; and

22 (6) Family support services.

23 (g) Funds shall be expended according to the priorities and criteria for disbursement  
24 established by the Secretary under section four of this article, and pursuant to legislative rules  
25 authorized in section five of this article.

**§9-10-4. Criteria and priorities for use of Fund.**

1 (a) The Secretary shall establish priorities and criteria for the disbursement of moneys in  
2 the Fund by conducting at least one annual public meeting in each of the state's three  
3 congressional districts in existence on January 1, 2018, to identify the needs of citizens with  
4 traumatic brain injuries and spinal cord injuries, and to identify the gaps in services to these  
5 citizens. Public meetings held pursuant to the requirements of this section shall be noticed and  
6 advertised as public meetings, and the Secretary shall accept public comments for not less than  
7 thirty days following each public meeting.

8 (b) On or before December 31 of each year the Secretary shall issue an annual report to  
9 the Governor and to the Legislative Oversight Commission on Health and Human Resources  
10 Accountability, with recommendations for meeting the identified needs within the existing  
11 programs, proposing statutory changes to facilitate the delivery of services, improving  
12 coordination of services and summarizing its actions during the preceding year.

13 (c) Moneys expended for services described under section three of this article shall be as  
14 a payer of last resort and only for citizens of this state. An individual shall use comparable benefits

15 and services that are available prior to the expenditure of moneys available to that individual  
16 through the Fund.

**§9-10-5. Promulgation of legislative rules.**

1 (a) The Secretary may propose legislative rules for promulgation, in accordance with the  
2 provisions of §29A-3-1 et seq. of this code, necessary for the transaction of its business or to  
3 carry out the purposes of this article. The rules shall include priorities and criteria for the  
4 disbursement of moneys in the Fund.

5 (b) The rules of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation  
6 Fund Board previously promulgated pursuant to section three, §18-10K-1 et seq. of this code shall  
7 remain in force and effect until the promulgation of new or additional rules by the Secretary.

**§9-10-6. Legislative Audit.**

1 (a) On or before July 1, 2020, the Legislative Auditor shall conduct a post audit of the West  
2 Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation Fund and report its findings and  
3 recommendations to the Joint Standing Committee on Government Organization.

4 (b) The post audit required by this section shall include, but not be limited to, a review and  
5 comprehensive report upon the following subjects:

6 (1) The Department of Health and Human Resources' compliance with statutes and  
7 legislative rules governing administration of the fund.

8 (2) The adequacy of oversight controls for expenditures from the fund.

9 (3) The extent to which the Department of Health and Human Resources administers the  
10 fund to maximize the number of eligible individuals served.

11 (4) The effectiveness of the Department of Health and Human Resources' efforts to  
12 provide community education and outreach to eligible individuals regarding the availability of  
13 assistance from the fund.

14 (5) The extent, if any, to which the functions of the fund unnecessarily duplicate the  
15 functions of other state programs.

## CHAPTER 18. EDUCATION.

### ARTICLE 10K. WEST VIRGINIA TRAUMATIC BRAIN AND SPINAL CORD INJURY REHABILITATION FUND ACT.

#### §18-10K-1. Transfer of fund to Department of Health and Human Resources.

1           (a) Effective July 1, 2018, the West Virginia Traumatic Brain and Spinal Cord Injury  
2 Rehabilitation Fund Board as created by the prior enactment of this article is abolished and its  
3 powers and duties are transferred to the West Virginia Department of Health and Human  
4 Resources in accordance with §9-10-1 et seq. of this code.

5           (b) The rules of the West Virginia Traumatic Brain and Spinal Cord Injury Rehabilitation  
6 Fund Board shall remain in force and effect until the promulgation of new or additional rules by  
7 the Secretary of the Department of Health and Human Resources, pursuant to §9-10-5 of this  
8 code.

9           (c) On the effective date of this section, all records necessary to effectuate the purposes  
10 of §9-10-1 et seq. of this code shall be transferred to the Secretary of the Department of Health  
11 and Human Resources.