

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

Introduced
House Bill 160

BY DELEGATES PHILLIPS, FOSTER, HAMRICK, WESTFALL,
GRAVES, KUMP, ESPINOSA, COOPER, JENNINGS, SHOTT,
AND SUMMERS

[Introduced June 17, 2019; Referred
to the Select Committee on Education Reform A]

1 A BILL to repeal §18-10L-1, §18-10L-2, §18-10L-3, §18-10L-4, §18-10L-5, §18-10L-6, §18-10L-
2 7, §18-10M-1, §18-10M-2, §18-10M-3, §18-10M-4, §18-10M-5, §18-10M-6, §18-10M-7,
3 and §18-10M-8 of the Code of West Virginia, 1931, as amended; to amend said code by
4 adding thereto a new article, designated §16-59-1, §16-59-2, §16-59-3, §16-59-4, §16-59-
5 5, §16-59-6, and §16-59-7; and to amend said code by adding thereto a new article,
6 designated §16-60-1, §16-60-2, §16-60-3, §16-60-4, §16-60-5, §16-60-6, §16-60-7, and
7 §16-60-8, all relating generally to moving two existing articles to a more appropriate
8 chapter within the code, said articles concerning public health and aiding persons with
9 disabilities to live independent lives, the Ron Yost Personal Assistance Services Act, and
10 the West Virginia Independent Living Act; providing a short title; providing legislative
11 findings, purposes, principles, and policies; providing for definitions; establishing
12 programs; continuing the West Virginia Statewide Independent Living Council and defining
13 its membership, duties, governance, and authorities; continuing the Ron Yost personal
14 assistance services board and defining its membership, duties, and authorities; providing
15 for a state plan for independent living; establishing program requirements, program
16 services, and program limitations; providing eligibility requirements for programs;
17 providing for funding for programs; authorizing the creation of grants and use of contracts;
18 providing rulemaking authority; and providing for reporting requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 59. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§16-59-1. Short title.

1 This article may be known and cited as the “Ron Yost Personal Assistance Services Act.”

§16-59-2. Policy; principles; projects.

1 (a) It is hereby declared to be the public policy of this state that:

2 (1) Availability of personal assistance services for persons with disabilities should be
3 increased to enable them to live in their own homes and communities;

4 (2) Recipients of personal assistance will be those with severe disabilities, including
5 mental, sensory or physical impairments, or any combination of impairments, who are in need of
6 assistance to live in a living arrangement of their choice in lieu of a more restrictive setting; and

7 (3) Recipients of personal assistance have the right to make decisions regarding and to
8 control the provision of their personal assistance services. This includes, but is not limited to,
9 hiring, training, managing, paying and terminating an assistant's employment.

10 (b) Implementation of the program established in this article shall be based on the following
11 five basic principles:

12 (1) Services may be received where they are needed, either at home or in the community,
13 subject to available funding;

14 (2) Services may be scheduled when they are needed, 24 hours a day, seven days a
15 week, as scheduled or needed on an emergency basis, subject to available funding;

16 (3) Recipients contribute to the cost of services based on their ability to pay;

17 (4) Recipients are granted control over the services provided to the fullest extent possible
18 including how, when and by whom services are provided; and

19 (5) Eligibility shall be based on functional needs rather than on a medical diagnosis.

20 (c) Subject to available funds, other personal assistance projects shall be developed to
21 increase the availability of services throughout the state to serve eligible individuals.

§16-59-3. Definitions.

1 The following words and phrases, when used in this article, have the following meanings
2 unless the context clearly indicates otherwise:

3 (1) "Personal assistance services" means:

4 (A) Those basic and ancillary services that enable eligible individuals to live in their homes
5 and communities rather than in institutions and to carry out functions of daily living, self-care and
6 mobility;

7 (B) Basic services include, but are not limited to, getting in and out of a bed, wheelchair
8 or motor vehicle; assistance with routine bodily functions, such as health maintenance activities;
9 bathing and personal hygiene; dressing and grooming; and feeding, including preparation and
10 cleanup.

11 (2) "Personal assistant" means an individual of the consumer's choice who provides
12 personal assistance services for the eligible individual.

13 (3) "Recipient" means any individual receiving funds through the Ron Yost personal
14 assistance program.

15 (4) "Ron Yost personal assistance program functional assessment tool" means the written
16 and physical evaluation used to determine eligibility of individuals to receive services and the
17 hours of service to be provided under this article.

§16-59-4. Program requirements.

1 (a) To be eligible for assistance from the Ron Yost personal assistance program, a
2 recipient must have a physical, mental or sensory impairment that affects one or more major life
3 activity, and who:

4 (1) Experiences any physical, mental or sensory impairment, or combination of
5 impairments, which can be expected to recur or last for a period of not less than 12 months as
6 determined by the evaluation conducted using the Ron Yost personal assistance program
7 functional assessment tool;

8 (2) Requires assistance to complete functions of daily living, self-care and mobility,
9 including, but not limited to, those functions included in the definition of personal assistance
10 services;

11 (3) Must apply for Medicaid and provide written documentation of eligibility or denial to the
12 board; and

13 (4) Is currently not receiving personal assistance services through Medicaid.

14 (b) The Division of Rehabilitation Services shall, directly or through contract approved by
15 the Ron Yost personal assistance services board:

16 (1) Administer the personal assistance services program in accordance with the state plan
17 for independent living established pursuant to the provisions of §16-60-7 of this code; and

18 (2) Provide training, information, and referral services relating to state and federal payroll
19 taxes, deductions and withholding, and wage withholding for child support and workers'
20 compensation, to recipients as necessary.

21 (c) The West Virginia Statewide Independent Living Council, established pursuant to
22 §16-60-6 of this code, shall:

23 (1) Appoint members to the Ron Yost personal assistance services board to fulfill the
24 functions as set forth in subsection (d) of this section. The board shall be composed of individuals
25 with disabilities: *Provided*, That one member shall be a representative of the West Virginia
26 Statewide Independent Living Council with a disability; and

27 (2) Develop and update as necessary, the Ron Yost personal assistance program
28 functional assessment tool.

29 (d) The Ron Yost personal assistance services board shall:

30 (1) Determine eligibility and approve hours of service for all applicants based on functional
31 assessments conducted using the Ron Yost personal assistance program functional assessment
32 tool. Each determination shall be in writing, a copy of which shall be provided to the applicant;

33 (2) Monitor disbursements and utilization of the program;

34 (3) Survey consumer satisfaction and recommend program revisions to the Division of
35 Rehabilitation Services;

36 (4) Develop and maintain a waiting list for those eligible individuals who cannot be served
37 immediately;

38 (5) Contract with public or private entities to assist in fulfilling the functions set forth in this
39 subsection;

40 (6) Approve contracts proposed by the Division of Rehabilitation Services with a public or
41 private entity for the fiscal management of the program established under this article; and

42 (7) Establish operating procedures.

43 (e) No member of the board is eligible to receive personal assistance services through the
44 program provided for in this article.

45 (f) Recipients shall:

46 (1) Apply for services through Medicaid and provide a copy of that determination to the
47 board;

48 (2) Comply with the employer responsibilities of hiring, supervising and, if needed,
49 terminating the employment of a personal assistant;

50 (3) Manage his or her own financial and legal affairs regarding the Ron Yost personal
51 assistance program; and

52 (4) Designate an individual, if necessary, to assist in fulfilling the functions set forth in this
53 subsection.

§16-59-5. Funding.

1 (a) There is hereby continued in the State Treasury a special fund designated the “Ron
2 Yost Personal Assistance Services Fund”. The fund shall be an appropriated account within the
3 Division of Rehabilitation Services and the moneys shall be expended exclusively for the
4 purposes of this article.

5 (b) Funds made available for programs under this article may be used only for the
6 planning, designing, delivering and administering of personal assistance services and training.

7 The Division of Rehabilitation Services may use not more than seven percent of the total allocation
8 for administrative costs.

9 (c) The Division of Rehabilitation Services may apply for and use all funding sources to
10 carry out this program, including state and federal funds, program fees and other allocated
11 moneys.

12 (d) Funds shall be disbursed in a manner that ensures maximum consumer control of the
13 services provided under the program.

14 (e) Personal assistance services shall be available only to the extent funding is available
15 through annual appropriations of state, federal and other allotted funds.

16 (f) Funds or services provided to eligible individuals by the personal assistance services
17 program under this article shall not be considered as income to those individuals for any purpose
18 under this code or under the rules of any agency of state government.

§16-59-6. Rules.

1 The Division of Rehabilitation Services, as directed by the consumer board, shall propose
2 rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code,
3 necessary for the effective administration of this article including a sliding scale for funding based
4 on the recipient's, as the employer, ability to contribute to the cost of services.

§16-59-7. Report.

1 An annual report shall be filed with the Legislature on or before January 1, of each year,
2 which is to include a summary of the personal assistance services provided under this article and
3 recommendations regarding the program for upcoming fiscal years.

ARTICLE 60. WEST VIRGINIA INDEPENDENT LIVING ACT.

§16-60-1. Short title.

1 This article shall be known and may be cited as the "West Virginia Independent Living
2 Act".

§16-60-2. Legislative findings and declarations.

1 The Legislature hereby finds and declares the following:

2 (1) The state recognizes the value of independent living services in maximizing the ability
3 of people with disabilities to live more independently in their own homes and communities.

4 (2) Persons with disabilities have the best capacity to design, develop, manage and
5 implement the programs and services which are intended to assist them.

6 (3) The federal Rehabilitation Act, as amended, requires this state to develop a state plan
7 for independent living to describe and direct independent living services in West Virginia.

8 (4) The federal Rehabilitation Act, as amended, further calls for the establishment and
9 operation of a Statewide Independent Living Council to monitor, review and evaluate the
10 implementation of the state's plan for independent living services.

11 (5) Approximately 23 and one-half percent of West Virginia's residents have one or more
12 disabilities, many of whom could benefit directly or indirectly from the provision of independent
13 living services by the Division of Rehabilitation Services and the state's centers for independent
14 living.

15 (6) A need exists for a coordinated network of consumer-controlled centers for
16 independent living that effectively reaches persons with disabilities in all 55 counties of the state.

§16-60-3. Purpose.

1 The purpose of this article is to authorize, facilitate or provide for services and activities
2 that will enable individuals with disabilities to live as independently as possible in their own homes
3 and communities; to promote the philosophy of independent living, including consumer control,
4 peer support, self-help, self-determination, equal access, and individual and systems advocacy;
5 to enhance and maximize the leadership abilities, empowerment, independence and productivity
6 of individuals with significant disabilities; and to promote and maximize the integration and full
7 inclusion of individuals with significant disabilities into the mainstream of our society. To this end,
8 services provided pursuant to this article shall be offered in the most integrated settings to the
9 maximum extent possible, within available resources.

§16-60-4. Definitions.

1 Terms used in this article have the same meanings as those provided in the federal
2 Rehabilitation Act, as amended, as follows:

3 (a) “Consumer control” means circumstances in which individuals with disabilities having
4 decision-making authority.

5 (b) “Council” means the Statewide Independent Living Council.

6 (c) “Designated state entity” means the entity designated in the state plan for independent
7 living to receive and administer federal funding as directed by the plan.

8 (d) “Federal Rehabilitation Act” or “federal act” means the act codified at 29 U. S. C. § 701,
9 et. seq.

10 (e) “Independent living services” means advocacy; independent living skills; training;
11 information and referral; peer counseling; peer support; transition, including services that facilitate
12 the transition of individuals with significant disabilities from nursing homes and other institutions
13 to home and community-based residences, with the requisite supports and services; provide
14 assistance to individuals with significant disabilities who are at risk of entering institutions so that
15 the individuals may remain in the community; facilitate the transition of youth who are individuals
16 with significant disabilities, who were eligible for individualized education programs pursuant to
17 section 614(d) of the federal Individuals with Disabilities Education Act (20 U. S. C. § 1414(d)),
18 and who have completed their secondary education or otherwise left school, to post-secondary
19 life; and any other service directed by the state plan which may include, but is not limited to, the
20 following:

21 (1) Assistive devices and equipment;

22 (2) Communication services;

23 (3) Counseling and related services;

24 (4) Community awareness programs to enhance the understanding and integration into
25 society of individuals with disabilities;

- 26 (5) Environmental modifications;
- 27 (6) Family services;
- 28 (7) Housing advocacy;
- 29 (8) Mobility training;
- 30 (9) Personal assistance services;
- 31 (10) Prostheses and other appliances and devices; and
- 32 (11) Rehabilitation technology.

33 (f) "Individual with a significant disability" means an individual with a severe physical or
34 mental impairment whose ability to function independently in the family or community or whose
35 ability to obtain, maintain or advance in employment is substantially limited and for whom the
36 delivery of independent living services will improve the ability to function, continue functioning, or
37 move toward functioning independently in the family or community or to continue in employment,
38 respectively.

39 (g) "State plan" means the state plan for independent living required by the federal
40 Rehabilitation Act of 1973, as amended.

§16-60-5. Eligibility for services.

1 Any individual with a significant disability, as defined in the state plan, is eligible for
2 services that may be made available pursuant to this article.

§16-60-6. Statewide Independent Living Council.

1 (a) The West Virginia Statewide Independent Living Council is continued as a not-for-profit
2 corporation which has been organized to meet the requirements of the federal Rehabilitation Act,
3 as amended. The council may not be established as an entity within any agency or political
4 subdivision of the state. The council shall be governed by a board of directors, consisting of the
5 voting members of the council, as provided in this section. The composition of this board of
6 directors, as well as the composition of the full council's membership, shall include a majority of
7 members who are persons with disabilities, as defined in the federal Rehabilitation Act, as

8 amended, who are not employed by any agency of the state or center for independent living. The
9 council's membership shall reflect balanced geographical representation, diverse backgrounds
10 and a broad range of disabilities, including, but not limited to, physical, mental, cognitive, sensory
11 and multiple.

12 (b) The council shall function as a partner with the centers for independent living, in
13 compliance with the federal Rehabilitation Act, as amended, in the planning and provision of
14 independent living services in the state. In conjunction with the centers for independent living, the
15 council shall develop, approve and submit to the proper federal authorities the state plan for
16 independent living, as required by the federal act. The council shall monitor, review and evaluate
17 the effectiveness of the implementation of the state plan.

18 (c) *Voting members.* — The council shall consist of 24 voting members, including one
19 director of an independent living center chosen by the directors of the independent living centers
20 in the state. The Governor shall select appointments from among the nominations submitted by
21 the council after having conducted a statewide solicitation from organizations representing a wide
22 range of individuals with disabilities and other interested groups, as coordinated by the council,
23 by and with the advice and consent of the Senate. These members may include individuals with
24 disabilities, other representatives from centers for independent living, parents and guardians of
25 individuals with disabilities, advocates of individuals with disabilities, representatives from the
26 business and educational sectors, representatives of organizations that provide services for
27 individuals with disabilities and other interested individuals, as appropriate to the purpose of the
28 council.

29 (d) *Nonvoting members.* — The membership of the council shall also include the following,
30 nonvoting, ex officio members or their designees who shall be appointed by the Governor:

31 (1) A representative of the designated state entity;

32 (2) A representative of the Division of Intellectual and Developmental Disabilities within
33 the Department of Health and Human Resources;

- 34 (3) A representative of the West Virginia Housing Development Fund;
- 35 (4) A representative of the West Virginia Association of Rehabilitation Facilities;
- 36 (5) A representative of the Bureau of Senior Services; and
- 37 (6) A representative of the Office of Special Education Programs and Assurance in the
- 38 Department of Education.

39 (e) The nonvoting membership may also include additional representatives of groups
40 represented on the board of directors as identified in the bylaws of the council.

41 (f) Appointment. — All council members are appointed by the Governor. The Governor
42 shall appoint from among the nominations submitted by organizations representing a wide range
43 of individuals with disabilities and other interested groups, as coordinated by the council.

44 (g) Terms of appointment. — All council members are appointed to serve for a term of
45 three years, except that a member appointed to fill a vacancy occurring prior to the expiration of
46 the term for which a predecessor was appointed shall be appointed for the remainder of the
47 unexpired term. No member of the council may serve more than two consecutive full terms.

48 (h) Vacancies. — Any vacancy occurring in the appointed membership of the council shall
49 be filled in the same manner as the original appointment. A vacancy does not affect the power of
50 the remaining members to execute the duties of the council.

51 (i) Delegation. — The Governor may delegate the authority to fill a vacancy to the
52 remaining voting members of the council after initial appointments have been made.

53 (j) Duties. — The council shall:

54 (1) In conjunction with the centers for independent living, develop and sign the state plan
55 for independent living;

56 (2) Monitor, review, and evaluate the implementation of the state plan;

57 (3) Coordinate activities with other bodies that address the needs of specific disability
58 populations and issues under other federal and state law;

59 (4) Ensure that all regularly scheduled meetings of the council are open to the public and
60 sufficient advance notice is provided;

61 (5) Submit to the federal funding agency such periodic reports as are required and keep
62 such records and afford access to such records, as may be necessary to verify such reports; and

63 (6) Ensure that the state plan for independent living sets forth the steps that will be taken
64 to maximize the cooperation, coordination and working relationships among:

65 (A) The Independent Living Rehabilitation Service Program, the Statewide Independent
66 Living Council and centers for independent living; and

67 (B) The designated state unit, other state agencies represented on the council, other
68 councils that address the needs of specific disability populations and issues, and other public and
69 private entities determined to be appropriate by the council.

70 (k) Authorities. — Unless prohibited by state law the council may, consistent with the state
71 plan described in section seven of this article:

72 (1) Work with centers for independent living to coordinate services with public and private
73 entities to improve services provided to individuals with disabilities;

74 (2) Conduct resource development activities to support the activities described in this
75 article to support the provision of independent living services by centers for independent living;
76 and

77 (3) Perform other functions, consistent with the purpose of this article and comparable to
78 other functions described in this subsection, as the council determines to be appropriate.

79 (l) Staffing and resources. — The council may employ staff as necessary to perform the
80 functions of the council, including an executive director and other staff as may be determined
81 necessary by the council. The council shall supervise and evaluate the executive director. The
82 council shall prepare, in conjunction with the designated state entity, a plan for the use of available
83 resources as may be necessary to carry out the functions and duties of the council pursuant to
84 this article, utilizing eligible federal funds including innovation and expansion funds as directed by

85 the federal Rehabilitation Act, as amended, funds made available under this article and funds
86 from other public and private sources. This resource plan shall, to the maximum extent possible,
87 rely on the use of existing resources during the period of plan implementation.

88 (m) Compensation and expenses. — The council may use available resources to
89 reimburse members of the council for reasonable and necessary expenses of attending council
90 meetings and performing council duties, such as personal assistance services, and if the member
91 is not employed or must forfeit wages from other employment, to pay compensation to the
92 member for attending official meetings or engaging in official duties not to exceed the amount
93 paid to members of the Legislature for their interim duties as recommended by the Citizens
94 Legislative Compensation Commission and authorized by law.

§16-60-7. State plan for independent living.

1 (a) The state plan shall direct the use of federal funds provided to the state under the
2 federal act and appropriated by the Legislature to the designated state entity in a line item for this
3 purpose, in addition to any state funds that may be appropriated to the designated state entity for
4 the provision of independent living services. The state plan, and each subsequent plan or
5 amendment thereto, shall address the priorities set forth in the federal act for establishing a
6 statewide program of independent living services, including a statewide network of centers for
7 independent living. The council chairperson, as authorized by the voting members of the council,
8 and a majority of the directors of the centers for independent living in the state will sign the state
9 plan indicating agreement with the content. The director of the designated state entity will sign
10 the state plan indicating agreement to serve as the designated state entity, to receive the funding,
11 distribute the funding in accordance to the state plan and to fulfill all responsibilities of the
12 designated state entity as provided in the federal Rehabilitation Act, as amended. The state plan
13 may be amended at any time at the agreement of the council and the centers for independent
14 living.

15 (b) The state plan, and each subsequent plan and any amendments thereto shall be
16 presented to the Legislative Oversight Commission on Health and Human Resources
17 Accountability, created pursuant to §16-29E-1 et seq. of this code, for review and consultation.

§16-60-8. Funding and grants.

1 (a) Funds appropriated to the designated state entity for independent living services shall
2 be administered by the designated state entity and may be used to fund any service or activity
3 included in the state plan for independent living, including funding centers for independent living.
4 In order to qualify for funding, a center for independent living shall meet the definition and comply
5 with the standards and indicators therefor, as established in the federal act.

6 (b) Subject to availability, the state plan may designate funds for purposes including, but
7 not limited to, the following:

8 (1) To provide independent living services to eligible individuals with significant disabilities;

9 (2) To demonstrate ways to expand and improve independent living services;

10 (3) To support the operation of centers for independent living;

11 (4) To support activities to increase the capacities of centers for independent living to
12 develop comprehensive approaches or systems for providing independent living services;

13 (5) To conduct studies and analyses, gather information, develop model policies and
14 procedures and present information, approaches, strategies, findings, conclusions and
15 recommendations to policymakers in order to enhance independent living services for individuals
16 with disabilities;

17 (6) To train individuals with disabilities and individuals who provide services to them and
18 other persons regarding the independent living philosophy; and

19 (7) To provide outreach to populations that are unserved or underserved by programs
20 under this act, including minority groups and urban and rural populations.

21 As provided in the state plan, funds appropriated for the purposes of this article shall be
22 utilized directly by the designated state entity for the provision of independent living services or

23 through grants or contracts, with the approval of the council, to agencies that meet the definition
24 of and comply with the standards and indicators for centers for independent living set forth in the
25 federal act.

CHAPTER 18. EDUCATION.

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-1. Short title.

1 [Repealed.]

§18-10L-2. Policy; principles; projects.

1 [Repealed.]

§18-10L-3. Definitions.

1 [Repealed.]

§18-10L-4. Program requirements.

1 [Repealed.]

§18-10L-5. Funding.

1 [Repealed.]

§18-10L-6. Rules.

1 [Repealed.]

§18-10L-7. Report.

1 [Repealed.]

ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING ACT.

§18-10M-1. Short Title.

1 [Repealed.]

§18-10M-2. Legislative findings and declarations.

1 [Repealed.]

§18-10M-3. Purpose.

1 [Repealed.]

§18-10M-4. Definitions.

1 [Repealed.]

§18-10M-5. Eligibility for services.

1 [Repealed.]

§18-10M-6. Statewide Independent Living Council.

1 [Repealed.]

§18-10M-7. State plan for independent living.

1 [Repealed.]

§18-10M-8. Funding and grants.

1 [Repealed.]

NOTE: The purpose of this bill is to move provisions from two articles under the Educations chapter of the West Virginia to a more appropriate location within the chapter for Public Health. The two current articles in Chapter 18 are to be repealed and then enacted as new articles within Chapter 16.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.