

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Introduced**

## **Senate Bill 564**

BY SENATORS TAKUBO AND STOLLINGS

[Introduced March 9, 2017; Referred  
to the Committee on Government Organization]



1 A BILL to amend and reenact §18-10M-2, §18-10M-4, §18-10M-6, §18-10M-7 and §18-10M-8 of  
2 the Code of West Virginia, 1931, as amended, all relating to the Statewide Independent  
3 Living Council; making changes required by amendments to the federal Rehabilitation Act  
4 of 1973; modifying the powers and duties of the council; altering the manner in which  
5 appropriations are administered; specifying funding eligibility criteria; and making  
6 conforming amendments.

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

1 That §18-10M-2, §18-10M-4, §18-10M-6, §18-10M-7 and §18-10M-8 of the Code of West  
2 Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 10M. WEST VIRGINIA INDEPENDENT LIVING ACT.**

**§18-10M-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 ~~enabling~~ maximizing  
3 the ability of people with disabilities to live more independently in their own homes and  
4 communities.

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

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

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

12 ~~(5) There are approximately one quarter of a million residents in this state with disabilities~~  
13 ~~who~~ Approximately twenty-three and one-half percent of West Virginia's residents have one or  
14 more disabilities, many of whom could benefit directly or indirectly from the provision of

15 independent living services by the Division of Rehabilitation Services and the state's centers for  
16 independent living.

17 ~~(6) Twenty five percent of West Virginia's total population is over fifty five years of age~~  
18 ~~and thirteen and one-half percent of that population requires assistance with activities of daily~~  
19 ~~living in order to live independently in their own homes~~

20 ~~(7)~~ (6) A need exists for a coordinated network of consumer-controlled centers for  
21 independent living that effectively reaches persons with disabilities in all fifty-five counties of the  
22 state.

**§18-10M-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) ~~"Division" means the Division of Rehabilitation Services~~ "Designated state entity"  
7 means the entity designated in the state plan for independent living to receive and administer  
8 federal funding as directed by the plan.

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

11 ~~(d)~~ (e) "Independent living services" means advocacy; independent living skills; training;  
12 information and referral; peer counseling; peer support; transition, including services that facilitate  
13 the transition of individuals with significant disabilities from nursing homes and other institutions  
14 to home and community-based residences, with the requisite supports and services; provide  
15 assistance to individuals with significant disabilities who are at risk of entering institutions so that  
16 the individuals may remain in the community; facilitate the transition of youth who are individuals  
17 with significant disabilities, who were eligible for individualized education programs pursuant to

18 section 614(d) of the federal Individuals with Disabilities Education Act (20 U. S. C. 1414(d)), and  
19 who have completed their secondary education or otherwise left school, to post-secondary life;  
20 and any other service directed by the state plan which may include, but is not limited to, the  
21 following:

- 22 (1) Assistive devices and equipment;
- 23 (2) Communication services;
- 24 (3) Counseling and related services;
- 25 (4) Community awareness programs to enhance the understanding and integration into
- 26 society of individuals with disabilities;
- 27 (5) Environmental modifications;
- 28 (6) Family services;
- 29 (7) Housing advocacy;
- 30 ~~(7)~~ (8) Mobility training;
- 31 ~~(8)~~ (9) Personal assistance services;
- 32 ~~(9)~~ (10) Prostheses and other appliances and devices; and
- 33 ~~(10)~~ (11) Rehabilitation technology.

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

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

**§18-10M-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. ~~Provided, That~~ The council may not be established as an entity within any agency  
4 or political subdivision of the state. The council shall be governed by a board of directors,  
5 consisting of the voting members of the council, as provided in this section. The composition of  
6 this board of directors, as well as the composition of the full council's membership, shall include  
7 a majority of members who are persons with disabilities, as defined in the ~~state plan, and a~~  
8 ~~majority of members~~ federal Rehabilitation Act, as amended, who are not employed by any  
9 agency of the state or center for independent living. The council's membership shall reflect  
10 balanced geographical representation, diverse backgrounds and ~~the full~~ a broad range of  
11 disabilities, ~~recognized under the federal act~~ including, but not limited to, physical, mental,  
12 cognitive, sensory and multiple.

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

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

27 representatives from the business and educational sectors, representatives of organizations that  
28 provide services for individuals with disabilities and other interested individuals, as appropriate to  
29 the purpose of the council.

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

32 (1) A representative of the ~~Division of Rehabilitation Services~~ designated state entity;

33 (2) A representative of the ~~Office of Behavioral Health Services~~ Division of Intellectual and  
34 Developmental Disabilities within the Department of Health and Human Resources;

35 (3) A representative of the West Virginia Housing Development Fund;

36 (4) A representative of the West Virginia Association of Rehabilitation Facilities;

37 (5) A representative of the Bureau of Senior Services; and

38 (6) A representative of the Office of Special Education Programs and Assurance in the  
39 Department of Education.

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

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

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

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

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

54 (j) *Duties.* — The council shall:

55 (1) In conjunction with the ~~Division of Rehabilitation Services~~ centers for independent  
56 living, develop and sign the state plan for independent living;

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

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

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

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

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

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

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

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

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

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

77 and

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

80 ~~(k)~~ (l) Staffing and resources. — The council may employ staff as necessary to perform  
81 the functions of the council, including an executive director ~~an administrative assistant~~ and other  
82 staff as may be determined necessary by the council. The council shall supervise and evaluate  
83 ~~staff~~ the executive director. The council shall prepare, in conjunction with the ~~division~~ designated  
84 state entity, a plan for the use of available resources as may be necessary to carry out the  
85 functions and duties of the council pursuant to this article, utilizing eligible federal funds including  
86 innovation and expansion funds as directed by the federal Rehabilitation Act, as amended, funds  
87 made available under this article and funds from other public and private sources. This resource  
88 plan shall, to the maximum extent possible, rely on the use of existing resources during the period  
89 of plan implementation.

90 ~~(l)~~ (m) Compensation and expenses. — ~~The council may use resources that are available~~  
91 ~~to it to reimburse members of the council for reasonable and necessary expenses incurred in the~~  
92 ~~performance of their duties, including attending council meetings, and to pay reasonable~~  
93 ~~compensation to any member of the council who is either not employed by the state or is not~~  
94 ~~otherwise compensated by his or her employer for performance of duties associated with the~~  
95 ~~council, up to \$50 per day~~ The council may use available resources to reimburse members of  
96 the council for reasonable and necessary expenses of attending council meetings and performing  
97 council duties, such as personal assistance services, and to pay reasonable compensation to a  
98 member of the council, if the member is not employed or must forfeit wages from other  
99 employment, for each day the member is engaged in performing council duties.

**§18-10M-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 ~~division~~ designated state entity in a line item  
3 for this purpose, in addition to any state funds that may be appropriated to the ~~division~~ designated

4 state entity for the provision of independent living services. The state plan, and each subsequent  
5 plan or amendment thereto, shall address the priorities set forth in the federal act for establishing  
6 a 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 ~~division~~ centers for  
14 independent 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 article twenty-nine-e, chapter sixteen of this code, for review  
18 and consultation.

**§18-10M-8. Funding and grants.**

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

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

- 9 (1) To provide independent living services to eligible individuals with significant disabilities;  
10 (2) To demonstrate ways to expand and improve independent living services;

- 11           (3) To support the operation of centers for independent living;
- 12           (4) To support activities to increase the capacities of centers for independent living to  
13 develop comprehensive approaches or systems for providing independent living services;
- 14           (5) To conduct studies and analyses, gather information, develop model policies and  
15 procedures and present information, approaches, strategies, findings, conclusions and  
16 recommendations to policymakers in order to enhance independent living services for individuals  
17 with disabilities;
- 18           (6) To train individuals with disabilities and individuals who provide services to them and  
19 other persons regarding the independent living philosophy; and
- 20           (7) To provide outreach to populations that are unserved or underserved by programs  
21 under this act, including minority groups and urban and rural populations.

22           As provided in the state plan, funds appropriated for the purposes of this article shall be  
23 utilized directly by the ~~division~~ designated state entity for the provision of independent living  
24 services or through grants or contracts, with the approval of the council, to agencies that meet  
25 the definition of and comply with the standards and indicators for centers for independent living  
26 set forth in the federal act.

NOTE: The purpose of this bill is to modify the West Virginia Independent Living Act and provisions relating to the statewide Independent Living Council to conform to requirements of the federal Rehabilitation Act of 1973, as amended.

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