

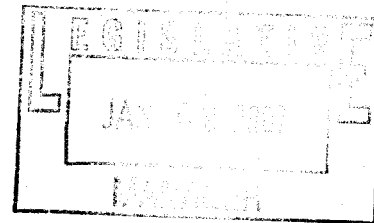
The Senate of West Virginia
Charleston

ROMAN W. PREZIOSO, JR.
1806 DOGWOOD DRIVE
FAIRMONT 26554
PHONE: (304) 366-5308

COMMITTEES:
HEALTH AND HUMAN RESOURCES
(CHAIRPERSON)
BANKING AND INSURANCE
FINANCE
LABOR
NATURAL RESOURCES
ECONOMIC DEVELOPMENT
RULES

January 8, 2006

Mr. John Homburg, Director
Legislative Services Division
Building 1, Room E-132
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305



Re: Legislative Oversight Commission on
on Health and Human Resources Accountability
Final Report

Dear Mr. Homburg:

Enclosed please find the Legislative Oversight Commission on Health and Human Resources Accountability's Final Report, as well as copies of draft legislation to be introduced in the upcoming 2007 Regular Session.

Thank you for your attention to this matter.

Sincerely,

Roman W. Prezioso, Jr.
13th Senatorial District

RWP/jkb
Enclosures

WEST VIRGINIA LEGISLATURE

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

2006- 2007 Interims

SENATE MEMBERS

Senator Roman W. Prezioso, Jr. Chair
Senator Jon Blair Hunter
Senator William R. Sharpe
Senator John Unger, II
Senator Donna J. Boley
Senator Don Caruth

HOUSE MEMBERS

Delegate Margarett R. Leach, Chair
Delegate Harold Michael
Delegate Don Perdue
Delegate Barbara Hatfield
Delegate Sally Susman
Delegate Mike Hall

Delegate Brent Boggs - *ex officio*
Delegate Bonnie Brown - *ex officio*
Delegate Larry Border - *ex officio*

Final Report of

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

The Legislative Oversight Commission on Health and Human Resources Accountability was appointed pursuant to the provisions of West Virginia Code §16-29E-1, *et seq*, following the 2006 Regular Session of the 77th Legislature. The Commission was assigned the following topics for study during the interim period:

HCR 61 - Requesting the Joint Committee on Government and Finance to study the state of emergency medicine in West Virginia

HCR 70 - Requesting the joint committee on government and finance to conduct a study on the need for and the appropriate methodology for providing salary improvements for counselors employed by the Division of Rehabilitation Services

HCR 75 - Requesting the Joint Committee on Government and Finance study the prospect of reducing medical care costs for state employees

HCR 79 - Requesting that the Committee on Government and Finance to conduct a study on the public health crisis created in West Virginia created by antibiotic resistance

HCR 80 - Requesting the Joint Committee on Government and Finance study the feasibility of establishing a drug repository program

HCR 82 - Requesting that the Committee on Government and Finance study the Medicaid Waiver Program for the elderly and people with disabilities in West Virginia

SCR 88 - Requesting Legislative Oversight Commission on Health and Human Resources Accountability study "money follows the person" concept

During the course of the 2006 - 2007 interim period the Legislative Oversight Commission on Health and Human Resources Accountability met and received information on these topics of study and other important healthcare issues from state agencies, political subdivisions, advocacy groups and other pertinent sources. The Commission **REPORTS** as follows:

EMERGENCY MEDICINE

The Commission heard from Dr. Rick Blum, Immediate Past President of the American College of Emergency Physicians, regarding the issue of Emergency Department Boarding. Dr. Blum provided national statistics on the decrease in the number of emergency departments and the number of hospital beds (111,000) while the number of emergency department visits increase 20% per year. He related that inappropriate utilization is approximately 15% nationally and that the emergency room is used as a medical home by the uninsured. These factors contribute to Emergency Department overcrowding and the diversion of ambulances to other hospitals in areas where one is available. He related that the West Virginia College of Emergency Physicians and the West Virginia Hospital Association are creating a Task Force to study the issues in West Virginia and will collect data in 2007 to measure the extent of the problem within this state and explore possible solutions.

The Commission **RECOMMENDS** that the Resolution be continued for the next Interim period and that the Legislature receive a report from the Task Force regarding the extent of the problem and the proposed solutions, but take no action at the current time.

SALARY IMPROVEMENTS FOR DIVISION OF REHABILITATION SERVICES COUNSELORS

The Commission heard from Nancy Tyler, Counsel, House Committee for Finance; Judy Neal, Rehabilitation Counselor; and Debbie Lovely, Acting Director, Division of Rehabilitation Counselors, regarding the problem of retention of qualified counselors. They related that the high educational requirements and the low salaries are creating a high turnover rate and requested an increase in the Division's appropriation.

The Commission **RECOMMENDED** that the Resolution be referred to a more appropriate interim Committee and a request was sent to the President and Speaker, a copy of which is attached to this

report.

REDUCING MEDICAL COSTS FOR PUBLIC EMPLOYEES

Anne L. Rooney, Vice President, Consulting Services, Joint Commission Resources and Joint Commission International, appeared before the Committee to discuss the role of Joint Commission International in accrediting foreign hospitals and health organizations.

Keith Huffman, General Counsel, Public Employees Insurance Agency, addressed the Committee regarding the potential problems associated with encouraging or providing incentives for public employees to seek medical care outside of the United States.

The Commission **RECOMMENDS** continued monitoring of this issue as it develops nationally, but taking no legislative action at this time.

ANTIBIOTIC RESISTANCE

Loretta E. Haddy, Ph.D., State Epidemiologist, Bureau of Public Health, Department of Health and Human Resources, addressed the Commission regarding the prevalence and cost of the increase in antibiotic resistant infections. Dr. Haddy related that the number of cases has increased so drastically that the Department is no longer capable of tracking them due to a lack of resources. She stated that many other states have a resource office within the State Health Department that serves as a resource, offering training and guidance, for the hospitals' Infection Control Practitioners. She recommended a greater effort be made to educate physicians and the public on the inappropriate use of antibiotics.

The Commission **RECOMMENDS** the Resolution be continued for the next Interim period and that the Legislature study possible approaches to the funding problems and explore possible approaches to resolving the issues raised.

DRUG REPOSITORY

Nancy Tyler, Counsel, House Committee on Finance presented information on what other states are doing and what drugs might be available to be redispensed to low income people. She related that none of the current legislative efforts in other states have been successful. She also reported that there are not large quantities of unused drugs available in the prison system and hospitals.

The commission **RECOMMENDS** that a letter be sent to the Board of Pharmacy, the Central Fill Pharmacy Board and the pharmaceutical vendors for nursing homes requesting that they meet and establish a process for donating unused drugs in nursing homes that meet certain criteria of the central fill pharmacy for redistribution and to report back to LOCHHRA their efforts and any need for legislation in the future to expand the program.

AGED & DISABLED MEDICAID WAIVER

Nancy Adkins, Commissioner, Bureau for Medical Services, presented information on the Aged and Disabled Waiver, including the eligibility criteria, federal requirements for assessment by an

independent entity, operation of the program by the Bureau for Senior Services, and the services provided. She related that the average number of days in the program has increased, which increases the program costs. Following the presentation, the members questions were combined, organized and transmitted in a letter to the Department. A copy of the letter and the Department's response are attached to this report.

The Commission **RECOMMENDS** the Resolution be continued for the next Interim period and that the Legislature continue to monitor the waiver program, including the utilization and cost, but makes no recommendations for further legislative action. The Commission further **RECOMMENDS** that the Legislature study the Mental Retardation/Developmental Disability Waiver in the same manner.

MONEY FOLLOWS THE PERSON

The Commission heard from several persons on the topic of transitioning persons from nursing homes into community setting.

- Donna Folkemer, Health Group Director & Staff Director, National Conference of State Legislatures, provided a national perspective on the Money Follows the Person.
- Sally Burchfiel, Program Manager of the Nursing Home Transition Grant and Community Integrated Personal Assistance Services and Supports Grant, Center for Excellence in Disabilities, West Virginia University discussed experiences of assisting West Virginia residents with the transitions grant and the integration back into the community setting and recommendations for designing and establishing a client centered long-term care system.
- John Bianconi, Commissioner, Behavioral Health and Health Facilities, Department of Health and Human Resources presented the Cabinet's concern regarding the long-term financing of the this endeavor.
- Tina E. Maher, Ombudsman Coordinator, Office of the Ombudsman for Behavioral Health presented information on the feasibility and cost-effectiveness from the Ombudsman's perspective.

The Commission **RECOMMENDS** that the Resolution be continued for the next Interim period and that the Legislature continue to monitor the federal and state activities, including utilization and cost, but makes no recommendations for further legislative action.

In addition to the assigned topics, the Commission also heard informational presentations throughout the 2006-2007 interim on a variety of healthcare topics. Many of these do not require further legislative action.

MEDICAID

The Commission heard at various times throughout the 2006 Interim period from Nancy Atkins, Commissioner, Bureau for Medical Services, Department of Health and Human Resources, and members of her staff. Ms. Atkins, or her staff, updated the Commission on these primary issues.

- The Medicaid annual report, including detail on the categories of expenditures.

- The “Medicaid Redesign” program and implementation. The Centers for Medicare & Medicaid Services approved the plan amendment in May, 2006. The Bureau for Medical Services chose to use the flexibility provided by the Deficit Reduction Act instead of applying for an 1115(b) waiver. Ms. Adkins advised the Commission members that the cost savings will be realized from the improved health status of the members. She explained the goals and components of the redesign plan.

HPV VACCINATION UPDATE

The Commission heard from John Grabenstein, PhD., Senior Director, Scientific Affairs, Merck Vaccine Division, Merck & Co., Inc. regarding the latest advances in the prevention of the Human Papilloma Virus, which causes certain types of cervical cancer resulting in 3700 deaths per year in the United States. The recommendations are for early vaccination of females against HPV. No legislative action is necessary.

DEFICIT REDUCTION ACT of 2005

The Commission heard from Jason Najmulsky, Interim Commissioner, Bureau for Children & Families, and Dan Hartwell, Program Manager, TANF, Department of Health and Human Resources regarding the changes needed to bring the West Virginia Works Act into compliance with the Deficit Reduction Act of 2005 and its corresponding interim regulations.

The Commission also heard from Samuel P. Cook, General Counsel & Deputy Inspector General, Office of the Inspector General, regarding provisions of the Deficit Reduction Act that affect Medicaid Fraud provisions, specifically the manner in which “whistleblowers” are compensated. He explained that implementing changes to the applicable provisions of state code would result in an increase in the cost to the State.

The Commission **RECOMMENDS** that legislation be adopted to conform the West Virginia Works Act with the interim federal regulations.

The Commission further **RECOMMENDS** that no changes be made to the applicable statutory provisions pertaining to Medicaid Fraud.

HEALTH CARE AUTHORITY

Sonia Chambers, Chair, West Virginia Health Care Authority, addressed the Committee with an overview of the 2006 Annual Report. She related that the aggregate profit for all West Virginia hospitals (acute care, critical access, long-term care, psychiatric and rehabilitation) has decreased by \$30.1 million since 2004. Other facilities included in the report are nursing homes, with a profit increase of \$23.4 million since 2004; home health agencies with a reported loss of \$919,000; hospice with a \$1 million increase since 2004; and behavioral health facilities, methadone treatment facilities and ambulatory surgical centers reporting profits.

PERI-NATAL REPORT

The Commission heard from Dr. Robert C. Nerhood, Professor and Chair, Department of Obstetrics

and Gynecology, Joan C. Edwards School of Medicine, Marshall University. Dr. Nerhood discussed the Perinatal Report and policy recommendations. He related that the State pays for approximately 56% of all births in West Virginia; the percentage of pregnant women who smoke is at 27%; and substance abuse by pregnant women is prevalent, which leads to a costly detoxification of the infant. As to the status of hospital services, Dr. Nerhood related that the state has three (3) Neo-natal Intensive Care Units (NICU), which could be sufficient if the transport system were improved with one central line to coordinate the transports. The cost of NICU care for one infant is \$7000/day for the first week, \$4000/day thereafter, with an average length of stay being four (4) to six (6) months. He related the possible cost savings of reducing the drug, alcohol and tobacco use of pregnant women.

NEWBORN SCREENING

Sue Murphy Binder, Director of Program Services, March of Dimes, presented information comparing the required screening in West Virginia to that of other states. She explained the importance of expanding the newborn screening panel with a goal of achieving uniformity with other states.

The Commission **RECOMMENDS** that legislation be adopted that expands the newborn screening panel required in West Virginia.

SCHIP PROGRAM AND PLANNED EXPANSION

Sharon Carte, Director, West Virginia Children's Health Insurance Program submitted monthly reports and presented the annual report to the Commission. Ms. Carte related that the planned expansion to 220% of the Federal Poverty Level is in progress with expected enrollment to begin on January 1, 2007, and coverage to begin on February 2, 2007. The expansion, WVCHIP Premium, will have a premium of \$35/month for one child and \$71/month for two or more children. The participants will have the co-payments waived for non-well visits if they have designated their child's medical home or primary care provider.

The Commission **RECOMMENDS** that monitoring of the implementation and programmatic costs continue until completed.

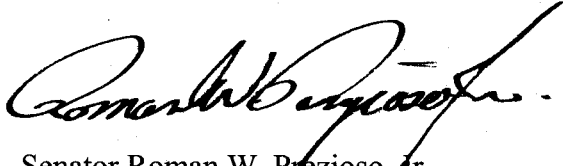
PARENT EDUCATION OF HEALTH CARE SERVICES

Renate Pore, Ph.D., MPH, Director, West Virginia Health Kids and Families Coalition, addressed the Commission regarding experiences and barriers to quality care for families receiving health benefits through governmental programs (Medicaid and SCHIP). Quality improves through education of the parents regarding the use of healthcare services. She provided a report of the study, funded by the Robert Wood Johnson Foundation.

SITE VISIT

During the August interim meetings, the Commission members and other interested Legislators visited Logan Regional Medical Center. Mr. Kevin N. Fowler, CEO, provided an overview of the center's history and planned projects. The members were invited to tour the facility. Following the tour, the Commission held its regular meeting at the Center.

Respectfully submitted:



Senator Roman W. Prezioso, Jr.
Co-Chair



Delegate Don Perdue
Acting Co-Chair

January 3, 2007

Earl Ray Tomblin, Lt. Governor/President
West Virginia Senate
1900 Kanawha Blvd., East
Building One, Room 227-M
Charleston, West Virginia 25305

Robert S. Kiss, Speaker
West Virginia House of Delegates
1900 Kanawha Blvd., East
Building One, Room 234-M
Charleston, West Virginia 25305

Re: Interim Assignments
Legislative Oversight Commission
on Health and Human Resources Accountability

Dear President Tomblin and Speaker Kiss:

When resolutions were assigned for study during the 2006 interim period, the Legislative Oversight Commission on Health and Human Resources Accountability was asked to study HCR 70. That resolution requested the joint committee on government and finance to conduct a study on the need for and the appropriate methodology for providing salary improvements for counselors employed by the Division of Rehabilitation Services.

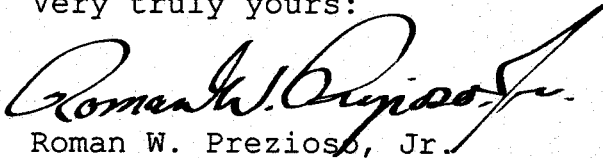
At our June Interim meetings we had representatives from the Division of Rehabilitation Services who addressed the Commission regarding their concerns. Following the presentation it was apparent that this resolution would be better served were it to be studied by a committee with better a better working knowledge of this issue. In fact, it is our understanding that when requesting a study of this issue, the interested parties asked that an education committee be assigned the resolution.

We are, therefore, asking that this issue be reassigned to a

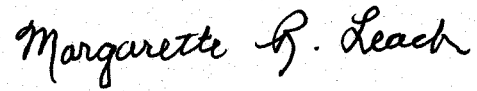
committee with a better understanding of its importance to give it the full consideration it deserves.

Thank you for your consideration.

Very truly yours:



Roman W. Prezioso, Jr.
Co-Chair of LOCHHRA



Margarett R. Leach
Co-Chair of LOCHHRA



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Bureau for Medical Services

Commissioner's Office

350 Capitol Street, Room 251

Charleston, West Virginia 25301-3706

Telephone: (304) 558-1703 Fax: (304) 558-1451

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 13, 2006

The Honorable Roman W. Prezioso, Jr.
Chair, Health and Human Resources Committee
Senate of West Virginia
1806 Dogwood Drive
Fairmont, West Virginia 26554

The Honorable Margarette R. Leach
West Virginia House of Delegates
1538 Rugby Road
Huntington, West Virginia 25705

Dear Senator Prezioso and Delegate Leach:

This is in response to your September 27, 2006 letter to Martha Walker, Secretary of the Department of Health and Human Resources, requesting specific information about the Aged and Disabled Waiver Program. The requests are categorized by three areas; WVMI Contract/Costs/Training, Funding/Slot Reduction, and Eligibility Criteria/Screening Guidelines/Denials and Appeals.

WVMI CONTRACT/COSTS/TRAINING

1. **The Administration keeps operating under the assumption that there is fraud throughout the waiver, yet, since 2003 they have been paying WVMI over \$2 million a year to be the gatekeepers for applicants? If there is fraud, why hasn't WVMI stopped that?**

The Bureau for Medical Services (BMS) is not operating under the assumption there is wide spread fraud throughout the waiver. The Centers for Medicare and Medicaid Services (CMS) has advised West Virginia that we are required to assure the objectivity of eligibility evaluations for the Home and Community Based Waiver Programs. They have stated to us that the same entity that performs Level of Care (medical eligibility) evaluations and provides services to individuals constitutes a conflict of interest. CMS advised BMS to develop a method to assure the objectivity for the Level of Care (medical eligibility) evaluations to take away the bias.

West Virginia Medical Institute (WVMI), which is a federally designated Quality Improvement Organization (QIO), allows us to meet the "objectivity assurance" requirement. A QIO also allows a 75% federal match.

2. **Can the Department of Health and Human Resources provide specific information about the training received by WVMI nurses who assess the Aged and Disabled Waiver? What are the training criteria?**

WVMI nurses are registered, professional nurses whose actions are governed by the West Virginia Board of Examiners for Registered Professional Nurses. They have an average of approximately 15 years of nursing experience in the field. Nurses that are hired also live in the communities they serve. This is to ensure they are part of the communities and understand the culture and values of the communities in which they live. WVMI hires and trains experienced registered nurses with strong backgrounds in home health, skilled nursing, rehabilitation, case management and related specialty areas. The hiring process for WVMI nurses includes a structured interview process, a stringent background check and thorough review of references. WVMI routinely and consistently train their nurses. Every nurse undergoes a multiple day training session, and all nurses are required to participate in regular training and monthly conference calls. Included in the ongoing training are assessment of "gold standard" cases and critiques of case review. This allows for WVMI to evaluate proper application of review criteria, documentation and accuracy. In addition to training, WVMI management closely monitors the "on the job performance" of each nurse. Every new nurse undergoes a 100% desk review of all evaluations conducted for their first month on the job. Cases are reviewed for consistency, accuracy with criteria, as well as completeness of documentation. A supervisor also monitors at least two onsite visits. After the initial training and review, a select sample of cases is chosen for desktop review on an ongoing basis. Annual on-site visits are also conducted. Finally, if any problems are identified, interim field visits are conducted. WVMI initially and continually train and monitor their nurse reviewers to ensure that the program is implemented in accordance with the state's guidelines.

3. **What is the total amount being paid per contract year to WVMI for accessing eligibility for the Aged and Disabled Waiver Program and the total paid, to date, to WVMI for the same?**

The WVMI contract runs 09-01 through 08-31 of each year. For the Aged and Disabled Waiver contract period that ended 08-31-2006, BMS paid \$2,321,010.96.

4. **If the contract amount to WVMI is greater than the amount spent on eligibility assessment, what is that amount and for what purpose?**

BMS has two contracts with WVMI. The contract you are referencing is for the entity to conduct an independent medical necessity evaluation on individuals seeking participation in the Aged and Disabled Waiver Program. The cost of conducting the eligibility assessment is included in the contract.

FUNDING/SLOT REDUCTION

1. **Since West Virginia ended the last fiscal year with a \$300 million state budget surplus why reduce the number of available slots and make it more difficult to obtain AD Waiver services?**

Please be advised that it is not the intention of BMS to make it difficult for any individual to obtain AD Waiver services. States are required to determine in advance how many members they plan to serve each year on the Home and Community Based Waiver Program and submit a number for each year to CMS as part of their five-year waiver renewal. The number of members to be served can be adjusted, dependent upon available state funding, during the five-year period by submitting a change to CMS for approval.

The ADW Program has historically had an annual budget of approximately \$60,000,000 per year. This includes state and federal funds. During the past year (July 1, 2005 to June 30, 2006) the ADW Program served approximately 4,650 individuals. The program was able to serve additional individuals beyond the 3,948 initially requested from the Centers for Medicare and Medicaid Services (CMS) in the waiver renewal application because \$3,700,000 additional state dollars were appropriated specifically for the program. The average cost per person, and the average length of stay per person on the Aged and Disabled Waiver Program has been increasing in the past couple of years.

2. **Why has this program not been expanded to enable some of the neediest West Virginians to continue to live independently in their own home?**

Several factors play into the number of individuals the state will be able to serve on an annual basis in the future on the Aged and Disabled Waiver Program. These factors include the availability of additional state dollars,

the average annual cost per person, average annual length of stay per person and the federal match for the annual year.

3. **Why place persons in nursing homes when the cost to do so is significantly higher than in-home care? Current estimates being that nursing home costs run \$54,000 annually and in-home care is \$13,000 annually.**

Community Based care is the preferred level of care if it can meet the individual's need. Unfortunately, many individuals are in nursing homes because they lack informal community or family supports which would permit them to stay in their homes. Nursing homes have staff available for the recipient 24-hours per day, 7 days a week; while the ADW Program provides from sixty-two (62) to one hundred fifty-five (155) hours per month of services. Availability of services is also a barrier. Many of the providers of Aged and Disabled Waiver Services in West Virginia only provide services Monday through Friday during traditional daytime working hours.

Considered that if 24-hour, around the clock care was provided in the home, the cost for additional homemaker services (\$3.05-15 minute unit) provided beyond the 62-155 hours already provided would cost an additional \$84,180-\$97,795 per person annually. This does not include the cost of such services as case management or skilled nursing.

4. **Is the State saving any money with the cuts to the Title XIX Medicaid Waiver Program? If so, please provide the actual figures.**

While there was an effort to make eligibility requirements more objective, there have been no identified cuts in the Aged and Disabled Waiver Program. In the past two years, \$3.2 and \$3.7 million have been appropriated for the program.

5. **Please provide a breakdown of the Aged and Disabled Waiver budget. Include within this breakdown;**

A. Direct service costs:

\$13,000,000 transfer of lottery funds from the Bureau of Senior Services (BoSS), of which \$450,000 is used for administrative costs and

\$12,550,000 is used for providing direct services; \$3,700,000 appropriations to BoSS for direct services. With the application of the

federal match available to the \$16,250,000 state funds, there is approximately \$59,874.724 available during SFY 07 for direct service.

B. Administrative expenses; and
\$450,000 is used for administrative expenses.

C. The amount budgeted for appeal hearings
The Office of Inspector General - Board of Review would have this information.

ELIGIBILITY CRITERIA/SCREENING GUIDELINES/DENIALS AND APPEALS

1. What are the most recent guidelines that WVMJ uses to assess eligibility?

The assessment tool for determining medical eligibility was modified in November 2005 to make the criteria more objective. Per Secretary Walker's directive on September 19, 2006, staff was instructed to go back to the pre November 2005 criteria. **WVMJ is currently utilizing the pre November 2005 referred to as the PAS 2000.**

2. How was the eligibility screening criteria developed? Who created them? Who approved them? Please provide names, addresses and credential of these individuals.

We cannot locate the history on the development of the Preadmission Assessment Screening 2000 (PAS 2000), the assessment tool that was utilized prior to November 2005 and which is currently being utilized. The assessment tool was modified in order to make it more objective and became effective November 1, 2005.

Rationale for Changes in PAS 2005

It came to the attention of the Bureau for Medical Services (BMS) and Bureau of Senior Services (BoSS) staff that there were three criterion areas on the PAS 2000 that were open to interpretation. The areas included vacating the building, incontinence, and medication administration. A group of professionals (administrators, registered nurses and social workers from BMS, BoSS, and WVMJ), met over a period time to study the ambiguity that was present in the PAS 2000

functional assessment instrument. After considerable research and discussion, consensus was reached and the following modifications were made to develop the PAS 2005 instrument.

Incontinence

Total Incontinence was described in the PAS 2000 as being incontinent three times or more a week either of bladder or bowel. *This varied from the respondent stating they were incontinent if they had mild incontinence commonly referred to as stress incontinence to total incontinence.* The PAS 2000 did not have the specificity to separate the very mild cases from those individuals with significant total incontinence.

Leakage of urine when you cough, laugh or bend over, or with exercise such as jumping or jogging, is called stress incontinence. Research showed that many individuals with such incontinent issues manage their homes and work full time jobs.

Today, there are many products that allow individuals with incontinent issues to live active lives. Absorbent undergarments soak up and hold urine and make maintaining hygiene easier. Incontinence was changed to being incontinent at all times instead of three times or more a week in the PAS 2005. Toileting, which is utilized in many states, was reviewed by this group as it was felt that this was also an important issue. This incorporates the individual's ability to manage their incontinence. Toileting is also captured in the criteria for transferring, walking, wheeling (ability to ambulate to the toilet), and bathing and dressing (ability to care for incontinence).

Total incontinence is the continuous and total loss of urinary control. The patient is continually wet. Individuals who are totally incontinent would require more care to prevent potential skin break down. This is the rationale for total incontinence being made a deficit.

Medication Administration

In the PAS 2000, this was measured as a "yes", with prompting/supervision, or a "no". *This varied from the individual having difficulty opening their pill bottle to not being able to physically get the medication to its destination (mouth, eye, ear, skin, etc).* The deficit was only given if the individual responded with a "no". The lack of specificity made it difficult for reviewers to evaluate this criterion. This was more

definitively defined in the PAS 2005. The PAS 2005 defined that the medicine be placed in the hand, mouth, tube, or eye by someone other than the recipient at all times.

Vacating the Building

In the PAS 2000, vacating the building was measured by the individual being able to vacate independently, with supervision, mentally unable and physically unable. The deficit was only given if the individual was mentally unable or physically unable to vacate the building. *This varied from individuals not being able to vacate the building because they were confused when they first awakened to the person not being able to walk.* In the PAS 2005, vacating the building was tied to observable criterion for being mentally unable or physically unable to vacate the building. This involved the criteria for orientation and/or walking. **The criteria for orientation and walking did not change from the PAS 2000.**

The functional nursing assessment to determine medical eligibility for the Aged and Disabled Waiver Program is completed by Professional Registered Nurses. As noted earlier, an independent assessment is needed for this program.

3. Do other states have similar eligibility criteria? If so, which states?

Eligibility criteria vary considerably among states. Some states require applicants to have moderate to severe functional limitations, some require nursing and medical needs, and others require a combination of both.

4. Please discuss how full deficit criteria was established specifically for:

A. Disorientation/Alzheimer's patients:

This criterion was developed as part of the PAS 2000. As previously mentioned, we have not been able to ascertain information on the formation of the PAS 2000. There was no change in orientation on the PAS 2005. The diagnosis of Alzheimer's, Multi-Infract, Senile Dementia, or Related Condition has to come from a physician (M.D. or D.O). On both assessments, this is measured by oriented, intermittent disorientation, total disorientation or comatose. Total disorientation or comatose constitutes a deficit.

B. Incontinence:

Total Incontinence was described in the PAS 2000 as being incontinent three times or more a week either of bladder or bowel. *This varied from the respondent stating they were incontinent if they had mild incontinence commonly referred to as stress incontinence to total incontinence.* The PAS 2000 did not have the specificity to separate the very mild cases from those individuals with significant total incontinence.

Leakage of urine when you cough, laugh or bend over, or with exercise such as jumping or jogging, is called stress incontinence. Research showed that many individuals with such incontinent issues manage their homes and work full time jobs.

Today, there are many products that allow individuals with incontinent issues to live active lives. Absorbent undergarments soak up and hold urine and make maintaining hygiene easier. Incontinence was changed to being incontinent at all times instead of three times or more a week in the PAS 2005. Toileting, which is utilized in many states, was reviewed by this group as it was felt that this was also an important issue. This incorporates the individual's ability to manage their incontinence. Toileting is also captured in the criteria for transferring, walking, wheeling (ability to ambulate to the toilet), and bathing and dressing (ability to care for incontinence).

Total incontinence is the continuous and total loss of urinary control. The patient is continually wet. Individuals who are totally incontinent would require more care to prevent potential skin break down. This is the rationale for total incontinence being made a deficit.

C. Self medication:

In the PAS 2000, this was measured as a "yes", with prompting/supervision, or a "no". *This varied from the individual having difficulty opening their pill bottle to not being able to physically get the medication to its destination (mouth, eye, ear, skin, etc).* The deficit was only given if the individual responded with a "no". The lack of specificity made it difficult for reviewers to evaluate this criterion. This was more definitively defined in the

PAS 2005. The PAS 2005 defined that the medicine be placed in the hand, mouth, tube, or eye by someone other than the recipient at all times.

D. Wheelchair use; and

This criterion was developed as part of the PAS 2000. This is measured on both the PAS 2000 and the PAS 2005 as no wheel chair, wheels independently, situational assistance, and total assistance. The individual must also have a deficit in walking in order to have a deficit in wheeling. A deficit is given if the individual needs situational assistance or total assistance.

E. The definition of "homebound".

Being homebound is not a requirement for the Aged and Disabled Waiver Program.

- 5. What is the reason for the inconsistency in the assessment process from county to county, nurse to nurse and case to case? Is the screening process different for nursing home patients? If so, why and how?**

A strong effort is made to ensure that WVMI nurses receive the same training so that evaluations would be conducted in an objective manner. WVMI also conducts inter-rater reliability studies to stay on top of this issue. Specifics regarding the concern over inconsistency in the assessment process would be greatly appreciated. We certainly would want to investigate these concerns.

The same Level of Care (medical eligibility) assessment tool is utilized for individuals being evaluated for admission to a nursing facility. Many of the assessments are conducted by hospital personnel. Although it is not a federal expectation, in the future BMS would like to explore the feasibility of conducting independent assessments on individuals seeking admission to a nursing facility.

- 6. What is the review process for verification of patient responses? Who participates?**

The WVMI nurse reviews the responses with the applicant/member and other parties present with the applicant/member to ensure that there is a mutual understanding of all parties.

- 7. Was there a comment period for the policy manual? If so, was the manual amended based upon comments? If so, what were these changes?**

There was a previous amendment of the manual which was made effective 11-01-2005. The manual was placed on the web site thirty (30) days prior to implementation.

There was a comment period for the policy manual which became effective 08-01-2006. BMS posted the manual on our web site on December 19, 2005 and accepted public comment past the 30 day requirements. All public comments were posted on the BoSS web site. The AD Waiver Manual was amended effective 08-01-2006.

The manual was again amended to reflect the conversion back to the PAS 2000 effective 10-01-2006.

- 8. Are the policies and procedures for eligibility used by WVMI nurses available to providers, service users and family members?**

All Medicaid policy manuals, including the Aged and Disabled Waiver Manual, are available via the BMS web site www.dhhr.org/bms.

- 9. Is there a system in place to analyze the number of appeals? Is there a breakdown of the number of successful appeals vs. the number of unsuccessful appeals? What is the average time elapsed between notice of provisional denial and a final hearing?**

The Office of Inspector General - Board of Review would have this information.

- 10. What is the cost of hiring hearing officers? What are their salaries and benefit packages?**

The Office of Inspector General - Board of Review would have this information.

- 11. Are attorneys hired at an hourly rate to assist with a backlog of hearings on appeals? If so, what is the hourly rate?**

The Office of Inspector General - Board of Review would have this information.

- 12. How frequently must an eligibility screening be done on a single patient? Annually, or more or less frequently?**

The Centers for Medicare and Medicaid Services (CMS) require that all individuals on any Home and Community Based Waiver Program be reassessed at least on an annual basis. There is a mechanism to provide additional information during the year to obtain additional hours of service, up to five (5) hours a day if an individuals' status changes.

- 13. What is the total number of applicants issued provisional denial notification? What is a breakdown of the reason given for the denial?**

We believe that you are referring to "potential" denial. If it is determined that the applicant does not meet medical eligibility, the applicant/applicant's representative and the referring physician will be notified by a "Potential Denial" Letter. This letter will advise the applicant of the reason for the potential denial; listing the areas in which deficiencies were found and a notice that the medical eligibility standard has not been met. A copy of the PAS and ADW policy will also be included with the "Potential Denial" letter. The applicant will be given two weeks to submit supplemental medical information to the WVMI nurse for further review.

If the supplemental medical information received determines medical eligibility, a notice of approved medical eligibility will be sent to the appropriate parties.

If the supplemental medical information received determines that there is still not medical eligibility, the applicant/applicant's representative and referring physician will be notified by a "Final Denial" letter and provide the reason for the adverse decision. The letter will also include the applicable ADW Policy Manual section(s), a copy of the PAS, supplemental information documentation (if it has been supplied), notice of free legal services, and a Request for Hearing form.

Deficits are unique for each individual, thus a breakdown would be difficult to ascertain. The deficits given with the most frequency are eating, grooming, dressing and bathing,

This information is from the WVMI data base. The following table denotes the type of evaluations completed and if they were denied or approved. The denial status is given after the supplemental medical information has been reviewed and it cannot substantiate medical eligibility for the program.

YEAR	TOTAL INITIAL EVALS COMPLETED	DENIED INITIAL EVALS	APPROVED INITIAL EVALS	TOTAL RE-EVALS COMPLETED	DENIED RE-EVALS	APPROVED RE-EVAL	TOTAL INITIAL AND RE-EVALS COMPLETED	TOTAL INITIAL AND RE-EVAL DENIALS
2004	2247	643	1604	3824	466	3358	6071	1109
2005	1846	791	1055	3780	357	3423	5626	1148
2006 * (Jan-June)	725*	437*	288*	1911*	414*	1497*	2636*	851*

14. What was the total number of people on the Aged and Disabled Wavier on June 1, 2004, June 1, 2005 and June 1, 2006 and the total number of people served on the wavier during the preceding year of each of these dates? What was the average length of stay during each of these years?

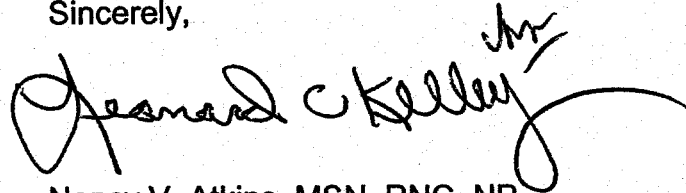
The following numbers have been reported to CMS. They are obtained by recipients that have filed claims. Please note that FY 2004/2005 will not be entirely closed out until all claims have exhausted their deadline for filing. This is to ensure that all recipients are captured in the final report.

YEAR	TOTAL UNDUPLICATED RECIPIENTS SERVED
07-01-2000 to 06-30-2001	4420
07-01-2001 to 06-30-2002	5411
07-01-2002 to 06-30-2003	5632
07-01-2003 to 06-30-2004	5149
07-01-2004 to 06-30-2005	4939 (preliminary number)* final number due December 31, 2006
07-01-2005 to 06-30-2006	Preliminary number due to CMS December 31, 2006

The Honorable Roman W. Prezioso, Jr.
The Honorable Margarett R. Leach
October 13, 2006
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I sincerely hope this information clarifies your concerns. If you have further questions please contact Pat Winston, Office Director, Community Based Services, Bureau for Medical Services 350 Capitol Street, Room 251, Charleston, WV 25301, telephone number (304) 558-1709.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy V. Atkins", with a stylized flourish extending to the right.

Nancy V. Atkins, MSN, RNC, NP
Commissioner

NVA:PW:sd

cc: Martha Yeager Walker

1 type I, hemoglobin S/Beta-thalassemia, sickle C disease, and
2 hearing deficiency.

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

4 That §16-22-3 of the Code of West Virginia, 1931, as amended,
5 be amended and reenacted to read as follows:

6 **ARTICLE 22. DETECTION AND CONTROL OF DISEASES IN NEWBORN CHILDREN.**

7 **§16-22-3. Tests for diseases specified by the State Public
8 Health Commissioner; reports; assistance to afflicted
9 children; Public Health Commissioner to propose rules.**

10 (a) The hospital or birthing center in which an infant is born,
11 the parents or legal guardians, the physician attending a newborn
12 child, or any person attending a newborn child not under the care
13 of a physician shall require and ensure that each such child be
14 tested for phenylketonuria, galactosemia, hypothyroidism, sickle
15 cell anemia, and certain other diseases specified by the Bureau for
16 Public Health. No later than the first day of July, 2007, the
17 Bureau for Public Health shall also require testing for congenital
18 adrenal hyperplasia, cystic fibrosis and biotinidase deficiency.
19 No later than the first day of July, 2008, the Bureau for Public
20 Health shall also require testing for isovaleric acidemia, glutaric
21 acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple
22 carboxylase deficiency, methylmalonic acidemia-mutase deficiency
23 form, 3-methylcrotonyl-CoA carboxylase deficiency, methylmalonic
24 acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-

1 ketothiolase deficiency, medium-chain acyl-CoA dehydrogenase
2 deficiency, very long-chain acyl-CoA dehydrogenase deficiency, long-
3 chain acyl-CoA dehydrogenase deficiency, trifunctional protein
4 deficiency, carnitine uptake defect, maple syrup urine disease,
5 homocystinuria, citrullinemia type I, argininosuccinate acidemia,
6 tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease,
7 and hearing deficiency.

8 (b) A positive result on any test specified in subsection (a)
9 of this section, or a positive result for any other diseases
10 specified by the Bureau for Public Health, shall be promptly
11 reported to the Bureau of Public Health by the director of the
12 laboratory performing such test.

13 (c) The Bureau for Public Health shall propose rules for
14 legislative approval in accordance with article three, chapter
15 twenty-nine of this code. These legislative rules may include:

16 (1) a means for the Bureau of Public Health, in cooperation
17 with other state agencies, and with attending physicians, to provide
18 medical, dietary and related assistance to children determined to
19 be afflicted with any disease specified in subsection (a) of this
20 section and certain other diseases specified by the Bureau for
21 Public Health, and

22 (2) a means for payment for the screening provided for in this
23 section, and

24 (3) anything further considered necessary by the Bureau for

1 Public Health to implement the provisions of this section.

NOTE: The purpose of the bill is to expand newborn screening from the current eight (8) by adding all twenty-nine (29) of the newborn screenings recommended by the March of Dimes and the American Academy of Pediatrics. The tests will be phased in over a two year period.

This section has been substantially rewritten therefore, strike-throughs and underscoring have been omitted.

1 hearing deficiency.

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17 adrenal hyperplasia, cystic fibrosis and biotinidase deficiency.
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20 acidemia type I, 3-Hydroxy-3-methylglutaric aciduria, multiple
21 carboxylase deficiency, methylmalonic acidemia-mutase deficiency
22 form, 3-methylcrotonyl-CoA carboxylase deficiency, methylmalonic
23 acidemia, Cbl A and Cbl B forms, propionic acidemia, beta-
24 ketothiolase deficiency, medium-chain acyl-CoA dehydrogenase

1 deficiency, very long-chain acyl-CoA dehydronenase deficiency, long-
2 chain acyl-CoA dehydronenase deficiency, trifunctional protein
3 deficiency, carnitine uptake defeat, maple syrup urine disease,
4 homocystinuria, citrullinemia type I, argininosuccinate acidemia,
5 tyrosinemia type I, hemoglobin S/Beta-thalassemia, sickle C disease,
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15 (1) a means for the Bureau of Public Health, in cooperation
16 with other state agencies, and with attending physicians, to provide
17 medical, dietary and related assistance to children determined to
18 be afflicted with any disease specified in subsection (a) of this
19 section and certain other diseases specified by the Bureau for
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24 Public Health to implement the provisions of this section.

NOTE: The purpose of the bill is to expand newborn screening from the current eight (8) by adding all twenty-nine (29) of the newborn screenings recommended by the March of Dimes and the American Academy of Pediatrics. The tests will be phased in over a two year period.

This section has been substantially rewritten therefore, strike-throughs and underscoring have been omitted.

1 **§9-9-3. Definitions.**

2 In addition to the rules for the construction of statutes in
3 section ten, article two, chapter two of this code and the words
4 and terms defined in section two, article one of this chapter,
5 unless a different meaning appears from the context:

6 (a) "At-risk family" means a group of persons living in the
7 same household, living below the federally designated poverty
8 level, lacking the resources to become self-supporting and
9 consisting of a dependent minor child or children living with a
10 parent, stepparent or caretaker-relative; an "at-risk family" may
11 include an unmarried minor parent and his or her dependent child or
12 children who live in an adult-supervised setting;

13 (b) "Beneficiary" or "participant" means any parent, work
14 eligible individuals or caretaker-relative in an at-risk family who
15 receives cash assistance for himself or herself and family members;

16 (c) "Care-taker relative" means grandparents or other non-
17 parental caretakers not included in the assistance group or
18 receiving cash assistance directly.

19 ~~(c)~~ (d) "Cash assistance" means temporary assistance for needy
20 families;

21 ~~(d)~~ (e) "Challenge" means any fact, circumstance or situation
22 that prevents a person from becoming self-sufficient or from
23 seeking, obtaining or maintaining employment of any kind, including
24 physical or mental disabilities, lack of education, testing,
25 training, counseling, child care arrangements, transportation,
26 medical treatment or substance abuse treatment;

1 ~~(e)~~ (f) "Community or personal development" means activities
2 designed or intended to eliminate challenges to participation in
3 self-sufficiency activities. These activities are to provide
4 community benefit and enhance personal responsibility, including,
5 but not limited to, classes or counseling for learning life skills
6 or parenting, dependent care, job readiness, volunteer work,
7 participation in sheltered workshops or substance abuse treatment;

8 ~~(f)~~ (g) "Department" means the state department of health and
9 human resources;

10 ~~(g)~~ (h) "Education and training" means hours spent regularly
11 attending and preparing for classes in any approved course of
12 schooling or training;

13 ~~(h)~~ (i) "Family assessments" means evaluation of the
14 following: Work skills, prior work experience, employability,
15 education and challenges to becoming self-sufficient such as mental
16 health and physical health issues along with lack of transportation
17 and child care;

18 ~~(i)~~ (j) "Income" means money received by any member of an at-
19 risk family which can be used at the discretion of the household to
20 meet its basic needs: *Provided*, That income does not include:

21 (1) Supplemental security income paid to any member or members
22 of the at-risk family;

23 (2) Earnings of minor children;

24 (3) Payments received from earned income tax credit or tax
25 refunds;

26 (4) Earnings deposited in an individual development account

1 approved by the department;

2 (5) Any educational grant or scholarship income regardless of
3 source; or

4 (6) Any moneys specifically excluded from countable income by
5 federal law;

6 (k) "Minor child head of household" means an emancipated minor
7 under the age of eighteen years;

8 (l) "Non-recipient parent" means an adult or adults excluded
9 or disqualified by federal or state law from receiving cash
10 assistance;

11 ~~(j)~~ (m) "Personal responsibility contract" means a written
12 agreement entered into by the department and a beneficiary for
13 purposes of participation in the WV works program;

14 ~~(k)~~ (n) "Secretary" means the secretary of the state
15 department of health and human resources;

16 ~~(i)~~ (o) "Subsidized employment" means employment with earnings
17 provided by an employer who receives a subsidy from the department
18 for the creation and maintenance of the employment position;

19 ~~(m)~~ (p) "Support services" includes, but is not limited to,
20 the following services: Child care; medicaid; transportation
21 assistance; information and referral; resource development services
22 which includes assisting families to receive child support and
23 supplemental security income; family support services which
24 includes parenting, budgeting and family planning; relocation
25 assistance; and mentoring services;

26 (q) "Temporary assistance to needy families" is the federal

1 program funded under Part A, Title IV of the Social Security Act,
2 codified at 42 U.S.C. §601 et. seq.

3 ~~(n)~~ (r) "Transitional assistance" may include medical
4 assistance, food stamp assistance, child care and supportive
5 services as defined by the secretary and as funding permits;

6 (s) "Two parent family" means two parents with a common child
7 residing in the same household and included in a common WV WORKS
8 grant payment or, two parents with a common child residing in the
9 same home and one or both of the parents are "work eligible
10 individuals", as that term is defined in this section, but are
11 excluded from the WV WORKS payments unless the exclusion is due to
12 an exemption as provided in section eight of this article.

13 ~~(o)~~ (t) "Unsubsidized employment" means employment with
14 earnings provided by an employer who does not receive a subsidy
15 from the department for the creation and maintenance of the
16 employment position;

17 (u) "Vocational educational training" means organized
18 educational programs, not to exceed twelve months for any
19 individual, that are directly related to the preparation of
20 individuals for employment in current or emerging occupations
21 required training other than a baccalaureate or advance degree.

22 ~~(p)~~ (v) "Work" means unsubsidized employment, subsidized
23 employment, work experience, community or personal development and
24 education and training; and

25 (w) "Work eligible individual" means an adult, or minor child
26 head-of-household, receiving assistance under the WV works program

1 or, a non-recipient parent living with a child receiving such
2 assistance; and

3 ~~(q)~~ (x) "Work experience" means ~~unpaid structured work~~
4 ~~activities that are provided in an environment where performance~~
5 ~~expectations are similar to those existing in unsubsidized~~
6 ~~employment and which provide training in occupational areas that~~
7 ~~can realistically be expected to lead to unsubsidized employment.~~
8 a publically assisted work activity, including work associated with
9 the refurbishing of publically assisted housing, performed in
10 return for program benefits that provide general skills, training,
11 knowledge, and work habits necessary to obtain employment. This
12 activity must be supervised daily and on an ongoing basis by an
13 employer, work site sponsor, or other responsible party.

14 **§9-9-6. Program participation.**

15 (a) Unless otherwise noted in this article, all adult
16 beneficiaries of cash assistance and work eligible individuals
17 shall participate in the West Virginia works program in accordance
18 with the provisions of this article. The level of participation,
19 services to be delivered and work requirements shall be defined
20 through legislative rules established by the secretary.

21 (b) Any individual exempt under the provisions of section
22 eight of this article may participate in the activities and
23 programs offered through the West Virginia works program.

24 (c) Support services other than cash assistance through the
25 West Virginia works program may be provided to at-risk families to
26 assist in meeting the work requirements or to eliminate the need

1 for cash assistance.

2 (d) Cash assistance through the West Virginia works program
3 may be provided to an at-risk family if the combined family income,
4 as defined in subsection (h), section three of this article, is
5 below the income test levels established by the department:
6 *Provided*, That any adult member of an at-risk family who receives
7 supplemental security income shall be excluded from the benefit
8 group: *Provided, however*, That, within the limits of funds
9 appropriated therefor, an at-risk family that includes a married
10 man and woman and dependent children of either one or both may
11 receive an additional cash assistance benefit in an amount of one
12 hundred dollars or less: *Provided further*, That an at-risk family
13 shall receive an additional cash assistance benefit in the amount
14 of twenty-five dollars regardless of the amount of child support
15 collected in a month on behalf of a child or children of the
16 at-risk family, as allowed by federal law.

17 **§9-9-7. Work requirements.**

18 (a) Unless otherwise exempted by the provisions of section
19 eight of this article, the West Virginia works program shall
20 require that anyone who possesses a high school diploma, or its
21 equivalent, or anyone who is of the age of twenty years or more, to
22 work or attend an educational or training program for at least the
23 minimum number of hours per week required by federal law under the
24 work participation rate requirements for all families in order to
25 receive any form of cash assistance. Participation in any
26 education or training activity, as defined in section three of this

1 article, shall be counted toward satisfaction of the work
2 requirement imposed by this section to the extent permissible under
3 federal law and regulation: *Provided*, That the participant
4 demonstrates adequate progress toward completion of the program.
5 ~~*Provided, however, That participants who are enrolled in*~~
6 ~~*post-secondary courses leading to a two- or four-year degree may be*~~
7 ~~*required to engage in no more than ten hours per week of federally*~~
8 ~~*defined work activities, unless the department certifies that*~~
9 ~~*allowing education to count toward required work activities would*~~
10 ~~*affect the state's ability to meet federal work participation*~~
11 ~~*rates. In accordance with federal law or regulation, the work,*~~
12 ~~*education and training requirements of this section are waived for*~~
13 ~~*any qualifying participant with a child under six years of age if*~~
14 ~~*the participant is unable to obtain appropriate and available child*~~
15 ~~*care services. In accordance with federal law or regulation, the*~~
16 *work, education and training requirements of this section are*
17 *waived for any qualifying participant with a child under six years*
18 *of age if the participant is unable to obtain appropriate and*
19 *available child care services.*

20 (b) The department and representatives of all college and
21 university systems of West Virginia shall develop and implement a
22 plan to use and expand the programs available at the state's
23 community and technical colleges, colleges and universities to
24 assist beneficiaries or participants who are enrolled or wish to
25 become enrolled in ~~*two and four-year degree programs of*~~
26 ~~*post-secondary education to meet the work requirements of this*~~

1 section. vocational educational training not to exceed twelve
2 months with respect to any individual to meet the work requirements
3 of this section. Vocational educational training must be
4 supervised daily and on an ongoing basis.

5 **§9-9-8. Exemptions.**

6 The secretary shall establish by rule categories of persons
7 exempt, but the exemption applies only to the work requirements of
8 the program: *Provided*, That a person who is exempt from the work
9 requirements may nevertheless participate voluntarily in work
10 activities. ~~The categories of exemption shall include, but are not~~
11 ~~limited to, the following:~~

12 ~~(a) A parent caring for a dependent child with a~~
13 ~~life-threatening illness,~~

14 ~~(b) Individuals over the age of sixty years,~~

15 ~~(c) Full-time students who are less than twenty years of age~~
16 ~~and are pursuing a high school diploma or its equivalent,~~

17 ~~(d) Persons with a physical or mental incapacity or persons~~
18 ~~suffering from a temporary debilitating injury lasting more than~~
19 ~~thirty days, as defined by the secretary,~~

20 ~~(e) Relatives providing in-home care for an individual who~~
21 ~~would otherwise be institutionalized, and~~

22 ~~(f) Any beneficiary who has a child in his or her at-risk~~
23 ~~family which has not attained twelve months of age, for a period of~~
24 ~~six months, and for a period of six months upon the birth of any~~
25 ~~additional child. *Provided*, That no more than one beneficiary in~~
26 ~~an at-risk family may be exempt at the same time. The categories of~~

1 exemptions are limited to the following:

2 (1) undocumented aliens and aliens under the five year ban;

3 (2) parents, or at state option on a case by case basis,
4 anyone receiving supplemental security income;

5 (3) a parent who is providing medically necessary care for a
6 disabled family member who resides in the home and is not a
7 full time student;

8 (4) minor parents who are not head of household;

9 (5) spouses of the head of household; or

10 (6) grandparents and other non-parental caretakers.

11 **§9-9-9. Personal responsibility contract.**

12 (a)(1) Every eligible adult beneficiary and work eligible
13 individual shall participate in a program orientation, family
14 assessments and in the development, and subsequent revisions, of a
15 personal responsibility contract. The contract shall be defined
16 based on the program time limits, support services available, work
17 requirements and family assessments.

18 (2) The participant's contract shall include the following
19 requirements: That the participant develop and maintain, with the
20 appropriate health care provider, a schedule of preventive care for
21 his or her dependent child or children, including routine
22 examinations and immunizations; assurance of school attendance for
23 school-age children under his or her care; assurance of properly
24 supervised child care, including after-school care; establishment
25 of paternity or active pursuit of child support, or both, if
26 applicable and if considered necessary; and nutrition or other

1 counseling, parenting or family-planning classes.

2 (3) If the participant is a teenage parent, he or she may
3 work, but the contract shall include the requirements that the
4 participant:

5 (A) Remain in an educational activity to complete high school,
6 obtain a general equivalency diploma or obtain vocational training
7 and make satisfactory scholastic progress;

8 (B) Attend parenting classes or participate in a mentorship
9 program, or both, if appropriate; and

10 (C) Live at home with his or her parent or guardian or in some
11 other adult-supervised arrangements if he or she is an
12 unemancipated minor.

13 (4) If the participant is under the age of twenty years and
14 does not have a high school diploma or its equivalent, the contract
15 shall include requirements to participate in mandatory education or
16 training which, if the participant is unemployed, may include a
17 return to high school, with satisfactory scholastic progress
18 required.

19 (b) In order to receive cash assistance, the participant shall
20 enter into a personal responsibility contract. If the participant
21 refuses to sign the personal responsibility contract, the
22 participant and family members are ineligible to receive cash
23 assistance: *Provided*, That a participant who alleges that the
24 terms of a personal responsibility contract are inappropriate based
25 on his or her individual circumstances may request and shall be
26 provided a fair and impartial hearing in accordance with

1 administrative procedures established by the department and due
2 process of law. A participant who signs a personal responsibility
3 contract or complies with a personal responsibility contract does
4 not waive his or her right to request and receive a hearing under
5 this subsection.

6 (c) Personal responsibility contracts shall be drafted by the
7 department on a case-by-case basis; take into consideration the
8 individual circumstances of each beneficiary; reviewed and
9 reevaluated periodically, but not less than on an annual basis;
10 and, in the discretion of the department, amended on a periodic
11 basis.

12 **§9-9-10. WV WORKS State College Program; eligibility; special**
13 **revenue account.**

14 (a) There is established the WV WORKS State College Program.
15 The program shall provide funding for participants who are enrolled
16 in post-secondary courses leading to a two or four-year degree.
17 There is created within the State Treasury a special revenue
18 account to be known as the "WV WORKS State College Program Fund".
19 Expenditures from the fund shall be for the purposes set forth in
20 this section and are not authorized from collections but are to be
21 made only in accordance with appropriations by the Legislature and
22 in accordance with the provisions of article three, chapter twelve
23 of this code and upon fulfillment of the provisions of article two,
24 chapter eleven-b of this code. Necessary expenditures include wage
25 reimbursements to participating employers, temporary assistance to
26 needy families, payments for support services, employment-related

1 child care payments, transportation expenses and administrative
2 costs directly associated with the operation of the program.

3 (b) All eligible adults attending post-secondary courses
4 leading to a two or four-year degree and who are not participating
5 in vocational education training, as that term is defined in this
6 section, shall be enrolled in the WV WORKS Separate College
7 Program. Participants in the program shall not be required to
8 engage in more than ten hours per week of federally defined work
9 activities. The work, education and training requirements of this
10 article are waived for any qualifying participant with a child
11 under six years of age if the participant is unable to obtain
12 appropriate and available child care services all other
13 requirements of WV WORKS shall apply to program administration for
14 adults enrolled in the program.

15 (c) The Department of Health and Human Resources shall work
16 with the Higher Education Policy Commission, as set for in article
17 one-B, of chapter eighteen-B of this code, and the Council for
18 Community and Technical College Education, as set forth in article
19 two-B, of chapter eighteen-B of this code, to develop and
20 implement a plan to use and expend the programs available at the
21 state's community and technical colleges and colleges and
22 universities to assist participants who are enrolled, or wish to
23 become enrolled, in two and four-year degree programs of post-
24 secondary education to meet the work requirements of this section.

25 **§9-9-11. WV WORKS Two Parent Families Program.**

26 (a) There is established the WV WORKS Two Parent Families

1 Program. The program shall provide funding for participants who
2 are a two parent family as that term is defined in this article.
3 There is created within the State Treasury a special revenue
4 account to be known as the "WV WORKS Two Parent Program Fund".
5 Expenditures from the fund shall be for the purposes set forth in
6 this section and are not authorized from collections but are to be
7 made only in accordance with appropriations by the Legislature and
8 in accordance with the provisions of article three, chapter twelve
9 of this code and upon fulfillment of the provisions of article two,
10 chapter eleven-b of this code. Necessary expenditures include wage
11 reimbursements to participating employers, temporary assistance to
12 needy families, payments for support services, employment-related
13 child care payments, transportation expenses and administrative
14 costs directly associated with the operation of the program.

15 (b) All eligible two parent families, as that term is defined
16 in this section, shall enroll in the WV WORKS Two Parent Families
17 Program. All requirements of WV WORKS shall apply to program
18 administration for two parent families enrolled in the program.

NOTE: The purpose of this bill is to make statutory changes that are necessary to bring the West Virginia Works statutes into compliance with requirements of the Deficit Reduction Act.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicated new language that would be added.

Section 9-9-10 and Section 9-9-11 are new therefore strike-throughs and underscoring have been omitted.

1 **ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.**

2 **§9-9-3. Definitions.**

3 In addition to the rules for the construction of statutes in
4 section ten, article two, chapter two of this code and the words
5 and terms defined in section two, article one of this chapter,
6 unless a different meaning appears from the context:

7 (a) "At-risk family" means a group of persons living in the
8 same household, living below the federally designated poverty
9 level, lacking the resources to become self-supporting and
10 consisting of a dependent minor child or children living with a
11 parent, stepparent or caretaker-relative; an "at-risk family" may
12 include an unmarried minor parent and his or her dependent child or
13 children who live in an adult-supervised setting;

14 (b) "Beneficiary" or "participant" means any parent, work
15 eligible individuals or caretaker-relative in an at-risk family who
16 receives cash assistance for himself or herself and family members;

17 (c) "Care-taker relative" means grandparents or other non-
18 parental caretakers not included in the assistance group or
19 receiving cash assistance directly.

20 ~~(c)~~ (d) "Cash assistance" means temporary assistance for needy
21 families;

22 ~~(d)~~ (e) "Challenge" means any fact, circumstance or situation
23 that prevents a person from becoming self-sufficient or from
24 seeking, obtaining or maintaining employment of any kind, including
25 physical or mental disabilities, lack of education, testing,
26 training, counseling, child care arrangements, transportation,

1 medical treatment or substance abuse treatment;

2 ~~(e)~~ (f) "Community or personal development" means activities
3 designed or intended to eliminate challenges to participation in
4 self-sufficiency activities. These activities are to provide
5 community benefit and enhance personal responsibility, including,
6 but not limited to, classes or counseling for learning life skills
7 or parenting, dependent care, job readiness, volunteer work,
8 participation in sheltered workshops or substance abuse treatment;

9 ~~(f)~~ (g) "Department" means the state department of health and
10 human resources;

11 ~~(g)~~ (h) "Education and training" means hours spent regularly
12 attending and preparing for classes in any approved course of
13 schooling or training;

14 ~~(h)~~ (i) "Family assessments" means evaluation of the
15 following: Work skills, prior work experience, employability,
16 education and challenges to becoming self-sufficient such as mental
17 health and physical health issues along with lack of transportation
18 and child care;

19 ~~(i)~~ (j) "Income" means money received by any member of an at-
20 risk family which can be used at the discretion of the household to
21 meet its basic needs: *Provided*, That income does not include:

22 (1) Supplemental security income paid to any member or members
23 of the at-risk family;

24 (2) Earnings of minor children;

25 (3) Payments received from earned income tax credit or tax
26 refunds;

1 (4) Earnings deposited in an individual development account
2 approved by the department;

3 (5) Any educational grant or scholarship income regardless of
4 source; or

5 (6) Any moneys specifically excluded from countable income by
6 federal law;

7 (k) "Minor child head of household" means an emancipated minor
8 under the age of eighteen years;

9 (l) "Non-recipient parent" means an adult or adults excluded
10 or disqualified by federal or state law from receiving cash
11 assistance;

12 ~~(j)~~ (m) "Personal responsibility contract" means a written
13 agreement entered into by the department and a beneficiary for
14 purposes of participation in the WV works program;

15 ~~(k)~~ (n) "Secretary" means the secretary of the state
16 department of health and human resources;

17 ~~(i)~~ (o) "Subsidized employment" means employment with earnings
18 provided by an employer who receives a subsidy from the department
19 for the creation and maintenance of the employment position;

20 ~~(m)~~ (p) "Support services" includes, but is not limited to,
21 the following services: Child care; medicaid; transportation
22 assistance; information and referral; resource development services
23 which includes assisting families to receive child support and
24 supplemental security income; family support services which
25 includes parenting, budgeting and family planning; relocation
26 assistance; and mentoring services;

1 (q) "Temporary assistance to needy families" is the federal
2 program funded under Part A, Title IV of the Social Security Act,
3 codified at 42 U.S.C. §601 et. seq.

4 ~~(n)~~ (r) "Transitional assistance" may include medical
5 assistance, food stamp assistance, child care and supportive
6 services as defined by the secretary and as funding permits;

7 (s) "Two parent family" means two parents with a common child
8 residing in the same household and included in a common WV WORKS
9 grant payment or, two parents with a common child residing in the
10 same home and one or both of the parents are "work eligible
11 individuals", as that term is defined in this section, but are
12 excluded from the WV WORKS payments unless the exclusion is due to
13 an exemption as provided in section eight of this article.

14 ~~(o)~~ (t) "Unsubsidized employment" means employment with
15 earnings provided by an employer who does not receive a subsidy
16 from the department for the creation and maintenance of the
17 employment position;

18 (u) "Vocational educational training" means organized
19 educational programs, not to exceed twelve months for any
20 individual, that are directly related to the preparation of
21 individuals for employment in current or emerging occupations
22 required training other than a baccalaureate or advance degree.

23 ~~(p)~~ (v) "Work" means unsubsidized employment, subsidized
24 employment, work experience, community or personal development and
25 education and training; and

26 (w) "Work eligible individual" means an adult, or minor child

1 head-of-household, receiving assistance under the WV works program
2 or, a non-recipient parent living with a child receiving such
3 assistance; and

4 ~~(g)~~ (x) "Work experience" means ~~unpaid structured work~~
5 ~~activities that are provided in an environment where performance~~
6 ~~expectations are similar to those existing in unsubsidized~~
7 ~~employment and which provide training in occupational areas that~~
8 ~~can realistically be expected to lead to unsubsidized employment.~~
9 a publically assisted work activity, including work associated with
10 the refurbishing of publically assisted housing, performed in
11 return for program benefits that provide general skills, training,
12 knowledge, and work habits necessary to obtain employment. This
13 activity must be supervised daily and on an ongoing basis by an
14 employer, work site sponsor, or other responsible party.

15 **§9-9-6. Program participation.**

16 (a) Unless otherwise noted in this article, all adult
17 beneficiaries of cash assistance and work eligible individuals
18 shall participate in the West Virginia works program in accordance
19 with the provisions of this article. The level of participation,
20 services to be delivered and work requirements shall be defined
21 through legislative rules established by the secretary.

22 (b) Any individual exempt under the provisions of section
23 eight of this article may participate in the activities and
24 programs offered through the West Virginia works program.

25 (c) Support services other than cash assistance through the
26 West Virginia works program may be provided to at-risk families to

1 assist in meeting the work requirements or to eliminate the need
2 for cash assistance.

3 (d) Cash assistance through the West Virginia works program
4 may be provided to an at-risk family if the combined family income,
5 as defined in subsection (h), section three of this article, is
6 below the income test levels established by the department:
7 *Provided*, That any adult member of an at-risk family who receives
8 supplemental security income shall be excluded from the benefit
9 group: *Provided, however*, That, within the limits of funds
10 appropriated therefor, an at-risk family that includes a married
11 man and woman and dependent children of either one or both may
12 receive an additional cash assistance benefit in an amount of one
13 hundred dollars or less: *Provided further*, That an at-risk family
14 shall receive an additional cash assistance benefit in the amount
15 of twenty-five dollars regardless of the amount of child support
16 collected in a month on behalf of a child or children of the
17 at-risk family, as allowed by federal law.

18 **§9-9-7. Work requirements.**

19 (a) Unless otherwise exempted by the provisions of section
20 eight of this article, the West Virginia works program shall
21 require that anyone who possesses a high school diploma, or its
22 equivalent, or anyone who is of the age of twenty years or more, to
23 work or attend an educational or training program for at least the
24 minimum number of hours per week required by federal law under the
25 work participation rate requirements for all families in order to
26 receive any form of cash assistance. Participation in any

1 education or training activity, as defined in section three of this
2 article, shall be counted toward satisfaction of the work
3 requirement imposed by this section to the extent permissible under
4 federal law and regulation: *Provided*, That the participant
5 demonstrates adequate progress toward completion of the program.
6 ~~*Provided, however, That participants who are enrolled in*~~
7 ~~*post-secondary courses leading to a two- or four-year degree may be*~~
8 ~~*required to engage in no more than ten hours per week of federally*~~
9 ~~*defined work activities, unless the department certifies that*~~
10 ~~*allowing education to count toward required work activities would*~~
11 ~~*affect the state's ability to meet federal work participation*~~
12 ~~*rates. In accordance with federal law or regulation, the work,*~~
13 ~~*education and training requirements of this section are waived for*~~
14 ~~*any qualifying participant with a child under six years of age if*~~
15 ~~*the participant is unable to obtain appropriate and available child*~~
16 ~~*care services. In accordance with federal law or regulation, the*~~
17 ~~*work, education and training requirements of this section are*~~
18 ~~*waived for any qualifying participant with a child under six years*~~
19 ~~*of age if the participant is unable to obtain appropriate and*~~
20 ~~*available child care services.*~~

21 (b) The department and representatives of all college and
22 university systems of West Virginia shall develop and implement a
23 plan to use and expand the programs available at the state's
24 community and technical colleges, colleges and universities to
25 assist beneficiaries or participants who are enrolled or wish to
26 become enrolled in ~~two and four-year degree programs of~~

1 ~~post-secondary education to meet the work requirements of this~~
2 ~~section. vocational educational training not to exceed twelve~~
3 ~~months with respect to any individual to meet the work requirements~~
4 ~~of this section. Vocational educational training must be~~
5 ~~supervised daily and on an ongoing basis.~~

6 **§9-9-8. Exemptions.**

7 The secretary shall establish by rule categories of persons
8 exempt, but the exemption applies only to the work requirements of
9 the program: *Provided*, That a person who is exempt from the work
10 requirements may nevertheless participate voluntarily in work
11 activities. ~~The categories of exemption shall include, but are not~~
12 ~~limited to, the following.~~

13 ~~(a) A parent caring for a dependent child with a~~
14 ~~life-threatening illness,~~

15 ~~(b) Individuals over the age of sixty years,~~

16 ~~(c) Full-time students who are less than twenty years of age~~
17 ~~and are pursuing a high school diploma or its equivalent,~~

18 ~~(d) Persons with a physical or mental incapacity or persons~~
19 ~~suffering from a temporary debilitating injury lasting more than~~
20 ~~thirty days, as defined by the secretary,~~

21 ~~(e) Relatives providing in-home care for an individual who~~
22 ~~would otherwise be institutionalized, and~~

23 ~~(f) Any beneficiary who has a child in his or her at-risk~~
24 ~~family which has not attained twelve months of age, for a period of~~
25 ~~six months, and for a period of six months upon the birth of any~~
26 ~~additional child. *Provided*, That no more than one beneficiary in~~

1 ~~an at-risk family may be exempt at the same time.~~ The categories of
2 exemptions are limited to the following:

3 (1) undocumented aliens and aliens under the five year ban;

4 (2) parents, or at state option on a case by case basis,
5 anyone receiving supplemental security income;

6 (3) a parent who is providing medically necessary care for a
7 disabled family member who resides in the home and is not a
8 full time student;

9 (4) minor parents who are not head of household;

10 (5) spouses of the head of household; or

11 (6) grandparents and other non-parental caretakers.

12 **§9-9-9. Personal responsibility contract.**

13 (a)(1) Every eligible adult beneficiary and work eligible
14 individual shall participate in a program orientation, family
15 assessments and in the development, and subsequent revisions, of a
16 personal responsibility contract. The contract shall be defined
17 based on the program time limits, support services available, work
18 requirements and family assessments.

19 (2) The participant's contract shall include the following
20 requirements: That the participant develop and maintain, with the
21 appropriate health care provider, a schedule of preventive care for
22 his or her dependent child or children, including routine
23 examinations and immunizations; assurance of school attendance for
24 school-age children under his or her care; assurance of properly
25 supervised child care, including after-school care; establishment
26 of paternity or active pursuit of child support, or both, if

1 applicable and if considered necessary; and nutrition or other
2 counseling, parenting or family-planning classes.

3 (3) If the participant is a teenage parent, he or she may
4 work, but the contract shall include the requirements that the
5 participant:

6 (A) Remain in an educational activity to complete high school,
7 obtain a general equivalency diploma or obtain vocational training
8 and make satisfactory scholastic progress;

9 (B) Attend parenting classes or participate in a mentorship
10 program, or both, if appropriate; and

11 (C) Live at home with his or her parent or guardian or in some
12 other adult-supervised arrangements if he or she is an
13 unemancipated minor.

14 (4) If the participant is under the age of twenty years and
15 does not have a high school diploma or its equivalent, the contract
16 shall include requirements to participate in mandatory education or
17 training which, if the participant is unemployed, may include a
18 return to high school, with satisfactory scholastic progress
19 required.

20 (b) In order to receive cash assistance, the participant shall
21 enter into a personal responsibility contract. If the participant
22 refuses to sign the personal responsibility contract, the
23 participant and family members are ineligible to receive cash
24 assistance: *Provided*, That a participant who alleges that the
25 terms of a personal responsibility contract are inappropriate based
26 on his or her individual circumstances may request and shall be

1 provided a fair and impartial hearing in accordance with
2 administrative procedures established by the department and due
3 process of law. A participant who signs a personal responsibility
4 contract or complies with a personal responsibility contract does
5 not waive his or her right to request and receive a hearing under
6 this subsection.

7 (c) Personal responsibility contracts shall be drafted by the
8 department on a case-by-case basis; take into consideration the
9 individual circumstances of each beneficiary; reviewed and
10 reevaluated periodically, but not less than on an annual basis;
11 and, in the discretion of the department, amended on a periodic
12 basis.

13 **§9-9-10. WV WORKS State College Program; eligibility; special**
14 **revenue account.**

15 (a) There is established the WV WORKS State College Program.
16 The program shall provide funding for participants who are enrolled
17 in post-secondary courses leading to a two or four-year degree.
18 There is created within the State Treasury a special revenue
19 account to be known as the "WV WORKS State College Program Fund".
20 Expenditures from the fund shall be for the purposes set forth in
21 this section and are not authorized from collections but are to be
22 made only in accordance with appropriations by the Legislature and
23 in accordance with the provisions of article three, chapter twelve
24 of this code and upon fulfillment of the provisions of article two,
25 chapter eleven-b of this code. Necessary expenditures include wage
26 reimbursements to participating employers, temporary assistance to

1 needy families, payments for support services, employment-related
2 child care payments, transportation expenses and administrative
3 costs directly associated with the operation of the program.

4 (b) All eligible adults attending post-secondary courses
5 leading to a two or four-year degree and who are not participating
6 in vocational education training, as that term is defined in this
7 section, shall be enrolled in the WV WORKS Separate College
8 Program. Participants in the program shall not be required to
9 engage in more than ten hours per week of federally defined work
10 activities. The work, education and training requirements of this
11 article are waived for any qualifying participant with a child
12 under six years of age if the participant is unable to obtain
13 appropriate and available child care services all other
14 requirements of WV WORKS shall apply to program administration for
15 adults enrolled in the program.

16 (c) The Department of Health and Human Resources shall work
17 with the Higher Education Policy Commission, as set for in article
18 one-B, of chapter eighteen-B of this code, and the Council for
19 Community and Technical College Education, as set forth in article
20 two-B, of chapter eighteen-B of this code, to develop and
21 implement a plan to use and expend the programs available at the
22 state's community and technical colleges and colleges and
23 universities to assist participants who are enrolled, or wish to
24 become enrolled, in two and four-year degree programs of post-
25 secondary education to meet the work requirements of this section.

26 **§9-9-11. WV WORKS Two Parent Families Program.**

1 (a) There is established the WV WORKS Two Parent Families
2 Program. The program shall provide funding for participants who
3 are a two parent family as that term is defined in this article.
4 There is created within the State Treasury a special revenue
5 account to be known as the "WV WORKS Two Parent Program Fund".
6 Expenditures from the fund shall be for the purposes set forth in
7 this section and are not authorized from collections but are to be
8 made only in accordance with appropriations by the Legislature and
9 in accordance with the provisions of article three, chapter twelve
10 of this code and upon fulfillment of the provisions of article two,
11 chapter eleven-b of this code. Necessary expenditures include wage
12 reimbursements to participating employers, temporary assistance to
13 needy families, payments for support services, employment-related
14 child care payments, transportation expenses and administrative
15 costs directly associated with the operation of the program.

16 (b) All eligible two parent families, as that term is defined
17 in this section, shall enroll in the WV WORKS Two Parent Families
18 Program. All requirements of WV WORKS shall apply to program
19 administration for two parent families enrolled in the program.

NOTE: The purpose of this bill is to make statutory changes that are necessary to bring the West Virginia Works statutes into compliance with requirements of the Deficit Reduction Act.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicated new language that would be added.

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