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N.J. 111 Dept. of Labor and Industry. <sup>State</sup> (NEW JERSEY) REGULATIONS REHABILITATION COMMISSION

NJ/KA8  
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1958

Adopted April 30, 1958, Meeting of the Commission

*Carl Holderman*

CARL HOLDERMAN, Chairman

*Lawrence O. Houston, Jr.*

LAWRENCE O. HOUSTON, JR., Director

Attachments:

- Chapter 64, Laws 1955
- Public Law 565
- Sections 2.9 and 24 of the State Plan
- October 17, 1955, Memorandum Opinion from Attorney General
- Minutes of April 30, 1958, Meeting of the Commission

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COPY NO. 2

The Commission shall be the policy making body of the agency and shall have the powers and authority to administer its affairs, including the powers provided in any of the applicable laws and statutes.

## I. OFFICERS

- A. The Chairman of the Commission is the Commissioner of Labor by virtue of C 64, L 1955: The Chairman shall (1) call and preside at all Commission meetings; (2) select committees; and (3) represent the Board in cabinet.
- B. A Vice-Chairman shall be elected by members of the Commission, at time of organization or whenever a vacancy occurs, and shall continue to serve until expiration of incumbent's term as a member of Commission unless otherwise previously removed or excused. The Vice-Chairman shall assume the duties and functions of the Chairman in his absence.
- C. The Director of the Commission shall serve also as its Executive Officer as provided by C 64, L 1955. In said capacity he shall:
  1. Prepare the annual report to the Governor as required by statute;
  2. Prepare agenda for Commission meetings;
  3. Represent the Commission in relation to the Bureau of Old-Age and Survivors Insurance and shall have power to modify agreements with BOASI as may be necessary for disability determinations purposes;
  4. Represent the Commission in relation to federal Office of Vocational Rehabilitation.
- D. In his capacity as Director, he shall:
  1. Direct the operation, administration and functioning of the rehabilitation program, on a full-time basis, as provided in the statute;
  2. Prepare plans for grants-in-aid for Commission approval;
  3. Act as approval officer for all disbursements as provided in Commission resolution adopted in Commission meeting on January 23, 1956;
  4. Act as and have such authority as appointing authority to approve and employ such staff, personnel and special assistants as may be necessary pursuant to Title 11, Civil Service, as provided in C 64, L 1955.

## II. FUNCTIONS OF THE BOARD

- A. The will of the Commission shall be expressed by vote on the following matters:
  1. Adoption, revision or amendment of "State Plan for Administration of New Jersey Program of Vocational Rehabilitation."
    - a. The "State Plan" is a formal, expository declaration prepared in compliance with the federal vocational rehabilitation act (PL 565) and in conformance with certain minimal specifications of the act (so as to be eligible for federal financial grants-in-aid) outlining, in broad terms, the operation of the state vocational rehabilitation program.
    - b. When formally approved by the federal Office of Vocational Rehabilitation, the "State Plan" and its amendments assume the effect of a state-federal agreement of cooperation.
    - c. Authority for adoption of the "State Plan" by the Commission is granted in enabling provision of C 64, L 1955.

## II. FUNCTIONS OF THE BOARD, Cont.

### 2. Appointment of Director

- a. The Chairman shall choose a committee of not more than three members among the Board who shall screen, by acceptable methods, all candidates and report their recommendations to the Board of Commissioners.
- b. Selection of Director will then be determined by majority vote of members present and voting.

3. Removal of the Director for misconduct or other good cause, after hearing, may be effected by a majority vote of the Commission as a whole.

4. Grants-in-aid to public or private non-profit rehabilitation agencies eligible for such aid as prescribed in the State Plan.

5. The amenability to the rehabilitation process of all disabled persons applying for renewal of Workmen's Compensation awards on grounds of total and permanent disability in order to determine whether or not the applicant should be ordered to submit to such services and certify to this fact. (C 105, L 1951 provides that payments of Workmen's Compensation in total and permanent disability cases shall cease at the end of 450 weeks "unless the employee shall have submitted to such physical or educational rehabilitation as may have been ordered by the Rehabilitation Commission.")

6. Adoption, revision, or amendment of the Commission Regulations.

- B. The Commission shall establish such advisory councils or committees as it deems necessary to the efficient administration of the program of rehabilitation in the State (Refer State Plan, Section 2.9) Members of advisory committees shall serve, without pay, for two years and may be re-appointed.
- C. The Board of Commissioners may hear the appeal or designate representatives of the Board to hear the appeal of any applicant for or recipient of vocational rehabilitation who may be aggrieved by any action or inaction of the Board, its employees or representatives. (Refer State Plan, Section 24.)
- D. The Board of Commissioners may, at its discretion, hear the appeal or designate representatives of the Board to hear the appeal of any employee of the Commission who gives evidence of having just cause for grievance. Such hearing will be provided only when the employee continues to be aggrieved after exhausting all prior appeal remedies as provided in the Administrative directives of the agency and of the State Department of Civil Service.

## III. VOTING

- A. The presence of a simple majority of the members of the Board of Rehabilitation Commissioners shall be required to constitute a quorum for voting or transacting other business of the Commission. (Refer Att. Gen. opinion, Oct. 1955 minutes.) A simple majority of members attending and voting, when a quorum is present, shall decide any question or resolution pertaining to such business of the Commission that may come before it.

III. VOTING, Cont.

- B. Members of the Commission may not delegate to other persons their power of voting or power to perform other acts discretionary or semi-judiciary.  
(Refer Att. Gen. opinion, Oct. 1955 minutes.)

ATTACHMENTS

1. Chapter 64, Laws 1955
2. Public Law 565
3. Sections 2.9 and 2.4 of the State Plan
4. October 17, 1955, Memorandum Opinion from Attorney General
5. Minutes of April 30, 1958, Meeting of the Commission

## 2.9 Advisory Committees.

The agency will establish such advisory committees as it deems necessary to the efficient administration of the program of rehabilitation in the State.

## SECTION 24. HEARINGS ON APPLICANT'S APPEALS.

Any individual applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the agency, is entitled to a hearing upon written application to the District Supervisor. The District Supervisor will conduct a hearing on a local level and inform the client, in writing, as to his decision. A further appeal may be made, in writing, to the Director, who may either hear the appeal or assign the duty to members of the staff. A final appeal may be made, in writing, to the Board of Commissioners, who may hear the appeal or designate representatives of the Board to hear the appeal.

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STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
Division of Law  
State House Annex  
Trenton 7

October 17, 1955

Honorable Carl Holderman  
Commissioner of Labor and Industry  
1035 Parkway Avenue  
Trenton, New Jersey

MEMORANDUM OPINION

Dear Commissioner Holderman:

Our opinion has been requested concerning two questions raised in connection with the State Rehabilitation Commission. The Commission, as it is now constituted, was established by Section 2 of the Vocational Rehabilitation Act of 1955, L. 1955, c. 64.

Section 2 provides as follows:

"There is hereby established the Rehabilitation Commission which is placed in the Department of Labor and Industry for house-keeping purposes. The commission is hereby designated as the sole State agency to administer and supervise vocational rehabilitation authorized by this chapter. The commission shall consist of the Commissioner of Labor and Industry, the Commissioner of Education, the Commissioner of the Department of Institutions and Agencies and 8 members appointed by the Governor.

"Of the 8 members so appointed by the Governor, 1 and only 1 shall be a person who by reason of vocation, activities and affiliations can be considered as a representative of the employers of labor of the State. One member, and only 1, shall be a person who by reason of vocation, activities and affiliations can be considered as a representative of organized labor of the State. Two members, 1 of whom shall be a woman, shall be chosen because of their special interest in and knowledge of the problem of the care, treatment and education of crippled children."

The first question propounded asks:

"Can the Commission legally adopt resolutions for its own conduct, establishing therein a requirement that a designated number of its members, less than a majority, constitutes a quorum for the transaction of official business."

The Vocational Rehabilitation Act itself does not specify the number of members that shall constitute a quorum. In such cases, the law in New Jersey is clear that the common law rule prevails, namely, that a majority of the members of such a body constitutes a quorum. Oakland v. Bayonne, 98 N.J.L. 806 (E. & A. 1923). McManus v. Police Commissioners, 73 N.J.L. 307 (Sup. Ct. 1906).

It is noted that Section 8(a) of the Act authorizes the Commission to "[a] adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this act." But the power to adopt rules does not encompass the power to alter the common law rule referred to above. Florham Park v. Dept. of

Health of N.J., & N.J. Misc. 549 (Sup.Ct. 1929). See also Barnert v. Paterson,  
48 N.J.L. 395 (Sup. Ct. 1886).

In light of the foregoing our answer to the first question is in the negative.

The second question submitted to us for our opinion inquires:

"Can Commission members, statutory or otherwise, delegate their responsibilities to designated substitutes or alternates as their personal representatives at regular or special meetings."

In your letter of request, you indicate that you have particular reference to the right of any such substitute to vote on questions requiring Commission action.

Our opinion is that no member of the Commission may designate a substitute who would have the power to vote at meetings of the Commission on matters requiring Commission action.

The controlling principle is outlined in 42 Am. Jur., Public Administrative Law, section 73:

"It is a general principle of law, expressed in the maxim 'delegatus non potest delegare' that a delegated power may not be further delegated by the person to whom such power is delegated. Apart from statute, whether administrative officers in whom certain powers are vested or upon whom certain duties are imposed may depute others to exercise such powers or perform such duties usually depends upon whether the particular act or duty sought to be delegated is ministerial, on the one hand, or, on the other, discretionary or quasi-judicial. Merely ministerial functions may be delegated to assistants whose employment is authorized, but there is no authority to delegate acts discretionary or quasi-judicial in nature. . . ."

In 76 C.J.S., Public Administrative Bodies and Procedure, Section 57, we find the principle stated in the following language:

"In general administrative officers and bodies cannot alienate, surrender, or abridge their powers and duties, and they cannot legally confer on their employees or others authority and functions which under the law may be exercised only by them or by other officers or tribunals. Although mere ministerial functions may be delegated, in the absence of permissive constitutional or statutory provision, administrative officers and agencies cannot delegate to a subordinate or another powers and functions which are discretionary or quasi-judicial in character, or which require the exercise of judgment; and subordinate officials have no power with respect to such duties. ."

Voting upon matters requiring Commission action is not a mere ministerial function, but one which necessarily requires the exercise of judgment. Since the Act establishing the Commission does not authorize the members thereof to designate deputies to serve on their stead or otherwise authorize a sub-delegation, it is our conclusion, in accordance with the general principle set forth above, that the members may not designate substitutes with the power to vote on questions requiring Commission action.

Very truly yours,  
GROVER C. RICHMAN, JR.  
Attorney General

By

Thomas L. Franklin  
Deputy Attorney General

NEW JERSEY REHABILITATION COMMISSION  
Minutes of Meeting  
April 30, 1958

The quarterly meeting of the New Jersey Rehabilitation Commission was held on Wednesday, April 30, 1958, at 3:45 p.m., 309 Washington Street, 5th Floor, Newark, New Jersey.

ROLL CALL

The following members of the Commission were present:

Honorable Carl Holderman, Chairman  
Honorable Irving Abramson  
Honorable Maurice Dorsen  
Honorable Martin Gerber  
Honorable Carl A. Maxwell, M. D.  
Honorable Jennie H. Moore, Vice-Chairman  
Honorable Franklin A. Moss  
Honorable John W. Tramburg

Also present were:

Lawrence O. Houstoun, Jr., Director, N. J. Rehabilitation Commission  
Henry A. Brodtkin, M. D., Medical Administrative Consultant, N. J. Rehabilitation Commission  
Alice L. Lester, Principal Clerk Stenographer, Disability Determinations Service, who acted as secretary in the absence of Mrs. Antoinette F. Napoli

The following members of the Commission were not present:

Honorable Frank W. Packard  
Honorable Frederick M. Raubinger

MINUTES OF PREVIOUS MEETING

It was moved that minutes of the February 19, 1958, meeting be approved as submitted. The motion was seconded and passed.

REGULATIONS

Director Houstoun distributed a draft of Regulations defining the activities of the Board and its members. He said the draft was prepared in response to suggestions by the Federal Office of Vocational Rehabilitation and to a request made by the Board on April 11, 1956. He added that the material was approved by the Department Counsel, former Deputy Attorney General Thomas L. Franklin and that Mr. Franklin had advised that upon adoption Commission Regulations are to be filed with the Secretary of State, in which event they will supplement the existing State statutes. This draft differs somewhat from the one distributed at the previous meeting, he said, in that the organization was changed and a few provisions expanded for clarity.

Director Houstoun read the Regulations and Commissioner Holderman suggested that questions or controversies be brought up at the time of reading.

In reference to Section I-D. 3 which states that the Director shall: "Prepare amendments and revisions of the State Plan, when necessary, for approval of the Commission," Commissioner Abramson suggested that the Commission set up a sub-committee to study the amendments and revisions before they are submitted for approval.

Director Houstoun stated that this provision does not give the Director exclusive jurisdiction.

Commissioner Holderman suggested that this point be held for later discussion.

After the reading of Section II-D, relating to appeals of employees, a question was raised as to hearings within the different agencies.

Director Houstoun indicated that agency directives provide that an appeal be made to the immediate District Supervisor and, if that is not satisfactory, to the Director or whomever he appoints to hear the appeal for him. The emphasis is on conciliation rather than arbitration, he added.

Commissioner Moss asked; "Who is the Director's boss?"

Director Houstoun stated that the state law implies that the Board is responsible for policy making.

Commissioner Holderman said that the law was written so that the Director is the top man in the agency in conformity with federal regulations. By law, he said, the Chairman of the Commission is designated the individual with whom the Director consults when the Commission is not in session. The Governor says "consult" means that the department head is the head of every sub-agency in every department, Commissioner Holderman said.

Commissioner Moss asked whether Commissioner Holderman has the power to suspend the Director.

Commissioner Holderman answered that he believed that the Governor has the power on recommendation of the department head. Commissioner Holderman said further that he believed all Commissioners should be consulted before a Director is removed.

Director Houstoun asked Commissioner Tramburg whether Civil Service rules and regulations are applicable in the case of a removal to which Commissioner Tramburg answered, "yes."

Commissioner Abramson asked Director Houstoun if the State Plan has the effect of Regulations.

Director Houstoun indicated that the State Plan shows how the program runs, types of services given, and the structure of the agency. In addition, he said, it is an agreement with the federal government that says that we are going to provide certain services in return for which they will provide the necessary grant-in-aid under Public Law 565. Any expenditures not consistent with the State Plan are not authorized by the federal government, he added. He said further that Regulations are a supplement to the law.

Commissioner Maxwell asked whether the Commission as a whole establishes policy.

Director Houstoun answered that the Commission might amend the State Plan or might supplement the Regulations, both of which are policy level decisions. He added that the State statute is quite comprehensive and he read from the State Act the duties of the Commission.

Commissioner Holderman indicated that it might be well to add to the Regulations what the responsibility of the Commission is.

Director Houstoun asked for a clear definition of where the amendment is to be made.

Commissioner Moss indicated that there should be an introductory paragraph stating the level at which the Commission shall express its will.

Commissioner Abramson moved that the following be added to the Regulations as an introductory paragraph:

"The Commission shall be the policy making body of the agency and shall have the powers and authority to administer its affairs, including the powers provided in any of the applicable laws and statutes."

The motion was seconded by Commissioner Moore and passed.

Commissioner Abramson moved that Section I-D. 3 of the drafted Regulations be deleted as follows:

"Prepare amendments and revisions of the State Plan, when necessary, for approval of the Commission."

The motion was seconded by Commissioner Moore and passed.

Commissioner Holderman stated the matter of majority attendance of Board members at meetings should be discussed, indicating that at the last meeting the Board worked as a committee with later approval of other members. He further stated that an opinion might be secured from the Attorney General as to whether or not something could be done in the way of meeting as a sub-committee for making recommendations to the Board for voting outside of the meeting.

Commissioner Moss questioned the advisability of this.

Commissioner Holderman said that somebody may otherwise challenge the legality of some action.

Commissioner Abramson questioned whether the Attorney General would approve any right of Commissioners to vote in absentia and without the opportunity to discuss.

Director Houstoun suggested that this matter be explored before the next meeting.

Commissioner Tramburg stated some discussion should be given to the responsibility for budget preparation.

Commissioner Abramson asked if the right to do so was contained in the powers given the Director to administer the affairs of the Commission.

Commissioner Tramburg indicated he would question that this is clear. He stated that some institutional Boards have been unclear on this because it was not specifically covered in the statute. He reviewed the rehabilitation statute and indicated that there is no mention of this in the law.

Commissioner Holderman stated that poor attendance is a big problem. He felt that, at budget time, there might be a problem in securing a quorum.

Commissioner Tramburg stated that the budget-making process should be the responsibility of the Director who would report on budget preparation in relation to policy and regulations. The Commissioners will not, he felt, have the time or know-how to review details of appropriations or requests and this should be placed upon a person who can act promptly.

Commissioner Holderman indicated that he was very much encouraged by the attendance of this meeting, stating that perhaps the time had something to do with so many being present.

Commissioner Tramburg suggested that where law is mentioned pertinent exhibits should be attached.

Director Houstoun stated that the whole thing could be combined and put in a binder.

Commissioner Holderman asked for a motion regarding the Regulations.

Commissioner Tramburg moved that the regulations be adopted as amended. The motion was seconded by Commissioner Moss and passed. (see attached)

#### GRANT-IN-AID, OCCUPATIONAL CENTER OF HUDSON COUNTY

Director Houstoun read a memorandum dated 4/28/58 to him from Assistant Director William Seligman (copy attached) regarding a grant-in-aid to the Occupational Center of Hudson County.

Commissioner Moore moved that this grant be approved. The motion was seconded by Commissioner Dorsen and passed.

#### PROFESSIONAL ADVISORY COUNCIL MEMBERSHIP

Director Houstoun presented biographical outlines (copies attached) concerning Mr. Joseph L. Weinberg and Dr. John W. Gleason, stating that both would be valuable members of the Advisory Councils on Mental Health and Mental Retardation respectively.

Commissioner Abramson asked how many are on the Councils.

Director Houstoun answered that there are now about five on each.

Commissioner Abramson suggested the name of Mrs. Batavia who is the director of the Jewish Community Social Service in Paterson.

Commissioner Holderman asked Commissioner Abramson to send in Mrs. Batavia's biography.

Commissioner Tramburg moved that Mr. Weinberg and Dr. Gleason become members of the Advisory Councils as recommended by Director Houstoun. The motion was seconded by Commissioner Moore and was passed.

Director Houstoun reported that the Advisory Council on Physical Restoration has been assisting in interpreting rehabilitation to the medical profession, prompting a series of meetings held in the last three months with medical societies. He further stated that other Councils have included discussions on methods of working more successfully with psychologists and on fees for psychological testing.

#### REPORT OF THE DIRECTOR

##### 1. Budget

Director Houstoun remarked about the seriousness of the fiscal situation, stating there will be little leeway in the 1958 budget and probably a shortage in 1959. The fiscal control program and the savings program are being studied by a staff committee, he added.

##### 2. Disability Determinations Service

Director Houstoun further reported that in reference to the Disability Determinations Service, the Regional Representative had made a statement that New Jersey's per unit cost was the lowest in the United States. Furthermore, he said, the Disability

Determinations Service is operating on a current basis at the present time.

Commissioner Tramburg asked whether there is need for additional staff, to which Director Houstoun answered, "no."

Commissioner Maxwell suggested that, when medical policies are to be considered by the Commission, since there is hardly time to discuss such at the Commission meeting, these things should be discussed by a sub-committee before presentation to the Commission as a whole.

Commissioner Abramson asked about the percentage of psychiatric cases.

Director Houstoun estimated that, of all cases accepted, one case in 15 is a psychiatric patient.

Commissioner Tramburg moved that the report of the Director be approved. The motion was seconded by Commissioner Gerber and passed.

#### EXPLANATION OF TOTAL DISABILITY CERTIFICATION PROCEDURE

Explanation of total disability certification procedure was distributed at the meeting (copy attached). Director Houstoun explained the procedure and asked for questions or comments.

Commissioner Maxwell wanted to know if a person who again needs rehabilitation after certification will be aided by the Commission.

Director Houstoun stated that the counselor always assures the client that he can always return to the Rehabilitation Commission and further stated that a total disability case is never closed.

#### CERTIFICATION OF TOTAL DISABILITY CASE

Resume of the following total disability case was distributed at the meeting (copy attached):

Brand, William B. - 1023 Grassmere Avenue, Wanamassa, New Jersey

Commissioner Dorsen moved that the case be certified to the Division of Workmen's Compensation in accordance with existing regulations. The motion was seconded by Commissioner Gerber and passed.

#### NEW BUSINESS

Director Houstoun asked if the meeting time of 3:45 p.m. was acceptable to the group. Majority of the Commissioners indicated that this time was more convenient and acceptable to them.

Commissioner Abramson moved that the meeting be adjourned. The motion was seconded by Commissioner Moore and passed.

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Attachments

Public Law 565 - 83d Congress  
Chapter 655 - 2d Session  
S. 2759

AN ACT

All 68 Stat. 652.

To amend the Vocational Rehabilitation Act so as to promote and assist in the extension and improvement of vocational rehabilitation services, provide for a more effective use of available Federal funds, and otherwise improve the provisions of that Act, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Vocational Rehabilitation Amendments of 1954".

Vocational Re-  
habilitation  
Amendments of  
1954.

AMENDMENTS TO THE VOCATIONAL REHABILITATION ACT

SEC. 2. The Vocational Rehabilitation Act (29 U. S. C. ch. 4) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS FOR GRANTS; PURPOSES FOR WHICH AVAILABLE

"SECTION 1. For the purpose of assisting the States in rehabilitating physically handicapped individuals so that they may prepare for and engage in remunerative employment to the extent of their capabilities, thereby increasing not only their social and economic well-being but also the productive capacity of the Nation, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1955, the sum of \$30,000,000, for the fiscal year ending June 30, 1956, the sum of \$45,000,000, for the fiscal year ending June 30, 1957, the sum of \$55,000,000, for the fiscal year ending June 30, 1958, the sum of \$65,000,000, and for each fiscal year thereafter such sums as Congress may determine, for grants to carry out the purposes of this Act. The sums so appropriated for any fiscal year shall be available for—

Types of grants.

"(1) grants to States under section 2 to assist them in meeting the costs of vocational rehabilitation services;

"(2) grants to States under section 3 to assist them in initiating projects for the extension and improvement of their vocational rehabilitation services; and

"(3) grants to States and to public and other nonprofit organizations and agencies under section 4 to assist in meeting the costs of projects for research, demonstrations, training, and traineeships, and special projects, which hold promise of making a substantial contribution to the solution of vocational rehabilitation problems common to a number of States, including temporary assistance in initiating a substantial nationwide expansion of vocational rehabilitation programs in the States.

The portion of such sums which shall be available for each of such three types of grants shall be specified in the Act appropriating such sums, except that the first \$23,000,000 of the aggregate sums so appropriated for any fiscal year shall be available for grants to States under section 2 to assist them in meeting the costs of vocational rehabilitation services.

Availability.

"GRANTS TO STATES FOR VOCATIONAL REHABILITATION SERVICES

"SEC. 2. (a) (1) From the sums available for any fiscal year for grants to States to assist them in meeting the costs of vocational rehabilitation services, each State shall be entitled to an allotment of an amount which bears the same ratio to such sums as the product of (A) the population of the State and (B) the square of its allotment percentage (as defined in section 11 (h)) bears to the sum of the corresponding products for all the States.

"(2) The allotment to any State for any fiscal year, as computed under the provisions of paragraph (1), which is less than such State's base allotment, shall, notwithstanding such provisions, be increased to the amount of such base allotment.

Base allotment.

"(3) For the purposes of this section, a State's base allotment is an amount equal to the amount allotted to such State for expenditures, under its State plan approved under this Act, for the fiscal year ending June 30, 1954 (which, in the case of the District of Columbia, shall be the amount appropriated to the Secretary for such fiscal year for providing rehabilitation services in the District of Columbia), increased by a uniform percentage which, if applied to the amounts so allotted to all the States, would increase the total of such allotments to \$23,000,000.

"(4) The allotment to any State, as computed under the provisions of paragraph (1) for any fiscal year, which is greater than such State's base allotment by a percentage in excess of one and one-half times the percentage by which the sums available for allotments under this section for such year exceed \$23,000,000, shall be reduced by the amount of such excess.

"(5) Sums equal to the reductions effected under paragraph (4) for any fiscal year shall be added to the allotments of other States as computed under paragraph (1) for such year as follows:

"(A) The allotment of any State as so computed which is less than such State's base allotment, shall be increased to the amount of such base allotment.

"(B) The remainder of such sums shall be used to increase by a uniform percentage the allotment of each of the States whose allotments were not subject to reduction under paragraph (4), but with such adjustments as may be necessary to prevent the allotment of any of such States from being so increased as to require reduction under paragraph (4).

"(b) (1) From each State's allotment under this section for any fiscal year ending after June 30, 1962, the Secretary shall pay to such State an amount equal to the Federal share (determined as provided in section 11 (i) ) of the cost of vocational rehabilitation services under the plan for such State approved under section 5, including expenditures for the administration of the State plan.

"(2) From each State's allotment under this section for any fiscal year ending prior to July 1, 1962, the Secretary shall make payments to such State, with respect to the cost of vocational rehabilitation services under the plan of such State approved under section 5, including expenditures for the administration of the State plan, determined as follows:

"(A) A portion of such allotment equal to the State's base allotment shall be available for payment to such State of its adjusted Federal share of such cost of vocational rehabilitation services.

"(B) After such portion has been paid in full, any remaining portions of a State's allotment shall be available for payment to such State of an amount equal to its Federal share (determined as provided in section 11 (i) ) of such cost for which payments have not been made under subparagraph (A).

"(3) For the purposes of this subsection—

"(A) a State's adjusted Federal share for any fiscal year means—

"(i) in the case of any fiscal year ending prior to July 1, 1959, the 1954 Federal share for such State; and

"(ii) in the case of the fiscal year ending June 30, 1960, June 30, 1961, or June 30, 1962, the Federal share for such

Adjusted Federal share.

State for such year increased (if it is less than such State's 1954 Federal share) or decreased (if it is greater than such State's 1954 Federal share) by 75 per centum, 50 per centum, and 25 per centum, respectively, of the difference between such Federal share for the year involved and the 1954 Federal share.

"(B) A State's 1954 Federal share means the percentage which (i) the base allotment of such State is of (ii) the sum of such allotment and the amount of 1954 State funds.

"(C) The 1954 State funds for any State shall be the amount of State and other non-Federal funds available for expenditures, under such State's plan approved under this Act, for the fiscal year ending June 30, 1954, as estimated by the Secretary for purposes of determining such State's allotment for such year for such expenditures, except that the 1954 State funds for the District of Columbia shall be the amount appropriated for such fiscal year out of the general fund of the District of Columbia for vocational rehabilitation.

"(c) If in any State there is, during the fiscal year ending June 30, 1954, a State agency administering or supervising the administration of the part of the State plan under which vocational rehabilitation services are provided for the blind, separate from the State agency administering or supervising the administration of the remainder of the State plan—

"(1) for each consecutive fiscal year during which there are such separate agencies, the portion of such State's allotment which is equal to such State's base allotment shall be divided between the two agencies in the same proportion as the amount allotted to the State under this Act for expenditures during the fiscal year ending June 30, 1954, was divided between such agencies;

"(2) for each such consecutive fiscal year ending prior to July 1, 1962, separate Federal shares shall be established for such agencies for purposes of subsection (b) (2), and for such purposes—

"(A) the 1954 Federal share for each shall be the percentage which (i) the portion of the State's allotment for the fiscal year ending June 30, 1954, which was made available to each, is of (ii) the portion of the sum of such allotment and the amount of 1954 State funds available to each for expenditures, under the State plan approved under this Act, during such year; and

"(B) the portion of the allotment referred to in subsection (b) (2) (A) for each shall be the portion of the State's allotment allocated to each pursuant to paragraph (1) of this subsection.

"GRANTS TO STATES FOR EXTENSION AND IMPROVEMENT PROJECTS

"SEC. 3. (a) (1) From the sums available for any fiscal year for grants to States to assist them in initiating projects for the extension and improvement of vocational rehabilitation services, each State shall be entitled to an allotment of an amount bearing the same ratio to such sums as the population of such State bears to the population of all the States. The allotment to any State under the preceding sentence for any fiscal year which is less than \$5,000 (or such other amount as may be specified as a minimum allotment in the Act appropriating such sums for such year) shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotments to each of the remaining States under the preceding sentence, but with such adjustments as may be necessary to

All 68 Stat. 655.

prevent the allotment of any of such remaining States from being thereby reduced to less than that amount.

HEW payment.

"(2) From each State's allotment under this section for any fiscal year, the Secretary shall pay to such State a portion of the cost of approved projects for the extension and improvement of vocational rehabilitation services (including their administration) under the State plan. The Secretary shall approve any project for purposes of this section only if the plan of such State approved under section 5 includes such project or is modified to include it and only if he finds the project constitutes an extension or improvement of vocational rehabilitation services under the State plan or will contribute materially to such an extension or improvement.

Project approval.

Duration.

"(b) Payments under this section with respect to any project may be made for a period of not to exceed three years beginning with the commencement of the first fiscal year for which any payment is made with respect to such project from an allotment under this section. To the extent permitted by the State's allotment under this section, such payments with respect to any project shall be equal to 75 per centum of the cost of such project, except that, at the request of the State, such payments may be less than such percentage of the cost of such project.

Restriction.

"(c) No payment may be made from an allotment under this section with respect to any cost with respect to which any payment is made under section 2.

"GRANTS FOR SPECIAL PROJECTS

Research, training, etc.

"SEC. 4. (a) From the sums available therefor for any fiscal year, the Secretary shall make grants to States and public and other non-profit organizations and agencies (1) for paying part of the cost of projects for research, demonstrations, training, and traineeships, and projects for the establishment of special facilities and services, which, in the judgment of the Secretary, hold promise of making a substantial contribution to the solution of vocational rehabilitation problems common to all or several States, and (2) for planning, preparing for, and initiating, during the fiscal year ending June 30, 1955, and the fiscal year ending June 30, 1956, a substantial nationwide expansion of vocational rehabilitation programs in the States. No grant shall be made under clause (1) or clause (2) of this subsection for furnishing to an individual any one course of study extending for a period in excess of two years. Any grant of funds under this subsection which will be used for direct services to physically handicapped individuals or for establishing facilities which will render direct services to such individuals must have the prior approval of the appropriate State agency.

Program expansion.

Limitations.

Direct services. Approval.

Demonstration rehabilitation center, Washington, D. C., area.

"(b) The Secretary shall be authorized to cooperate in assisting with the financing of a pilot demonstration rehabilitation center in the metropolitan Washington area to be used as a guide for rehabilitation centers which may be set up later in other parts of the country. Sums made available for such a pilot demonstration center in the Washington area may be used during such initial period as the Secretary may determine for such services as hospitalization, domiciliary care, and rehabilitation training, including costs of board and room of trainees and other services essential to the program, as in the discretion of the Secretary deems desirable. The services of such a pilot demonstration rehabilitation center in the metropolitan Washington area shall be made available to area civil service employees as well as to other patients.

Payments.

"(c) Payments under this section may be made in advance or by way of reimbursement for services performed and purchases made, as may

be determined by the Secretary; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of this section.

“(d) (1) There is hereby established in the Department of Health, Education, and Welfare a National Advisory Council on Vocational Rehabilitation, consisting of the Secretary, or his designee, who shall be Chairman, and twelve members appointed without regard to civil-service laws by the Secretary. The twelve appointed members shall be leaders in fields concerned with vocational rehabilitation or in public affairs, and six of such twelve shall be selected from leading medical, educational, or scientific authorities who are outstanding for their work in the vocational rehabilitation of physically handicapped individuals. Three of the twelve appointed members shall be persons who are themselves physically handicapped. Each appointed member of the Council shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor is appointed shall be appointed for the remainder of such term and except that, of the members first appointed, three shall hold office for a term of three years, three shall hold office for a term of two years, and three shall hold office for a term of one year, as designated by the Secretary at the time of appointment. None of such twelve members shall be eligible for reappointment until a year has elapsed after the end of his preceding term.

National Advisory Council on Vocational Rehabilitation. Members.

Term of office.

“(2) The Council is authorized to review applications for special projects submitted to the Secretary under this section and recommend to the Secretary for grants under this section any such projects or any projects initiated by it which it believes show promise of making valuable contributions to the vocational rehabilitation of physically handicapped individuals. The Secretary is authorized to utilize the services of any member or members of the Council in connection with matters relating to the administration of this section, for such periods, in addition to conference periods, as he may determine.

Duties.

“(3) Appointed members of the Council, while attending meetings of the Council or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding \$50 per diem, and shall also be entitled to receive an allowance for actual and necessary traveling and subsistence expenses while so serving away from their places of residence.

Per diem payments.

“(4) The Secretary shall transmit to the Congress annually a report concerning the special projects initiated under this section, the recommendations of the National Advisory Council on Vocational Rehabilitation, and any action taken with respect to such recommendations.

Report to Congress.

“STATE PLANS

“SEC. 5. (a) To be approvable under this Act, a State plan for vocational rehabilitation services shall—

Requirements.

“(1) designate the State agency administering or supervising the administration of vocational education in the State, or a State rehabilitation agency (primarily concerned with vocational rehabilitation), as the sole State agency to administer the plan, or to supervise its administration in a political subdivision of the State by a sole local agency of such political subdivision, except that where under the State’s law the State blind commission, or other agency which provides assistance or services to the adult blind, is authorized to provide them vocational rehabilitation services, such State blind commission or other State agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind (or to supervises the administration of such

All 68 Stat. 657.

part in a political subdivision of the State by a sole local agency of such political subdivision). and the State vocational education agency or the State rehabilitation agency shall be designated as the sole State agency with respect to the rest of the State plan;

"(2) provide that the head of the vocational rehabilitation bureau, division, or other unit of a State vocational education agency designated pursuant to paragraph (1), shall be subject only to the supervision and direction of such agency or its executive officer;

"(3) provide for financial participation by the State, and provide that the plan shall be in effect in all political subdivisions of the State;

"(4) show the plan, policies, and methods to be followed in carrying out the work under the State plan and in its administration and supervision, and in case vocational rehabilitation services cannot be provided all eligible physically handicapped individuals who apply for such services, show the order to be followed in selecting those to whom vocational rehabilitation services will be provided;

"(5) provide such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Secretary to be necessary for the proper and efficient administration of the plan;

"(6) contain (A) provisions relating to the establishment and maintenance of personnel standards, including provisions relating to the tenure, selection, appointment, and qualifications of personnel, and (B) provisions relating to the establishment and maintenance of minimum standards governing the facilities and personnel utilized in the provision of vocational rehabilitation services, but the Secretary shall exercise no authority with respect to the selection, method of selection, tenure of office, or compensation of any individual employed in accordance with such provisions;

"(7) provide that, in addition to training, maintenance, placement, and guidance, physical restoration services will be provided under the plan;

"(8) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require to carry out his functions under this Act, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

"(9) provide for cooperation by the State agency with, and the utilization of the services of, the State agency administering the State's public assistance program, and the Bureau of Old-Age and Survivors Insurance (Department of Health, Education, and Welfare) and of other Federal, State, and local public agencies providing services relating to vocational rehabilitation services;

"(10) provide for entering into cooperative arrangements with the system of public employment offices in the State and the maximum utilization of the job placement and employment counseling services and other services and facilities of such offices; and

"(11) provide that vocational rehabilitation services provided under the State plan shall be available to any civil employee of the United States disabled while in the performance of his duty on the same terms and conditions as apply to other persons.

"(b) The Secretary shall approve any plan which the Secretary finds fulfills the conditions specified in subsection (a) of this section.

“(c) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this section, finds that—

Withholding of payments.

“(1) the plan has been so changed that it no longer complies with the requirements of subsection (a) of this section; or

“(2) in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that no further payments will be made to the State under section 2 or 3 (or, in his discretion, that further payments will not be made to the State for projects under or parts of the State plan affected by such failure), until he is satisfied that there is no longer any such failure. Until he is so satisfied the Secretary shall make no further payments to such State under section 2 or 3 (or shall limit payments to projects under or parts of the State plan in which there is no such failure).

“(d) If any State is dissatisfied with the Secretary’s action under subsection (c) of this section, such State may appeal to the United States district court for the district where the capital of such State is located and judicial review of such action shall be on the record in accordance with the provisions of the Administrative Procedure Act.

Appeal. 60 Stat. 237. 5 USC 1001 note.

“METHOD OF COMPUTING AND MAKING PAYMENTS

“SEC. 6. The method of computing and paying amounts pursuant to section 2 or 3 shall be as follows:

“(1) The Secretary shall, prior to the beginning of each calendar quarter or other period prescribed by him, estimate the amount to be paid to each State under the provisions of such section for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Secretary may find necessary.

“(2) The Secretary shall pay, from the allotment available therefor, the amount so estimated by him for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which he finds that his estimate of the amount to be paid the State for any prior period under such section was greater or less than the amount which should have been paid to the State for such prior period under such section. Such payments shall be made prior to audit or settlement by the General Accounting Office, shall be made through the disbursing facilities of the Treasury Department, and shall be made in such installments as the Secretary may determine.

“ADMINISTRATION

“SEC. 7. (a) In carrying out his duties under this Act, the Secretary shall—

“(1) make studies, investigations, demonstrations, and reports with respect to abilities, aptitudes, and capacities of physically handicapped individuals, development of their potentialities, and their utilization in gainful and suitable employment;

Studies, etc.

“(2) cooperate with and render technical assistance to States in matters relating to the vocational rehabilitation of physically handicapped individuals;

Technical assistance, etc.

“(3) provide short-term training and instruction in technical matters relating to vocational rehabilitation services, including the establishment and maintenance of such research fellowships and traineeships, with such stipends and allowances (including travel and subsistence expenses), as he may deem necessary, except that no such training or instruction (or fellowship or scholarship) shall

Training.

All 68 Stat. 659.

Information, etc.

be provided any individual for any one course of study for a period in excess of two years; and

"(4) disseminate information as to the studies, investigations, demonstrations, and reports referred to in paragraph (1) and other matters relating to vocational rehabilitation services, and otherwise promote the cause of rehabilitation of physically handicapped individuals and their greater utilization in gainful and suitable employment.

Rules and regulations.

"(b) The Secretary is authorized to make rules and regulations governing the administration of this Act, and to delegate to any officer or employee of the United States such of his powers and duties, except the making of rules and regulations, as he finds necessary in carrying out the purposes of this Act.

"PROMOTION OF EMPLOYMENT OPPORTUNITIES

"SEC. 8. The Secretary of Labor and the Secretary of Health, Education, and Welfare shall cooperate in developing, and in recommending to the appropriate State agencies, policies and procedures which will facilitate the placement in employment of handicapped individuals who have received rehabilitation services under State vocational rehabilitation programs, and, together with the chairman of the President's Committee on Employment of the Physically Handicapped, shall develop and recommend methods which will assure maximum utilization of services which that committee, and cooperating State and local organizations, are able to render in promoting job opportunities for such individuals.

"REPORTS

"SEC. 9. Annual reports shall be made to the Congress by the Secretary as to the administration of this Act.

"AUTHORIZATION OF APPROPRIATION FOR ADMINISTRATION

"SEC. 10. There are hereby authorized to be included for each fiscal year in the appropriations for the Department of Health, Education, and Welfare such sums as are necessary to administer the provisions of this Act.

"DEFINITIONS

"SEC. 11. For the purposes of this Act—

"Vocational rehabilitation services".

"(a) The term 'vocational rehabilitation services' means diagnostic and related services (including transportation) incidental to the determination of eligibility for and the nature and scope of services to be provided; training, guidance and placement services for physically handicapped individuals; and, in the case of any such individual found to require financial assistance with respect thereto, after full consideration of his eligibility for any similar benefit by way of pension, compensation, and insurance, any other goods and services necessary to render such individual fit to engage in a remunerative occupation (including remunerative homebound work), including the following physical restoration and other goods and services—

"(1) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such a nature that such cor-

rection or modification may reasonably be expected to eliminate or substantially reduce such handicap within a reasonable length of time;

"(2) necessary hospitalization in connection with surgery or treatment specified in paragraph (1);

"(3) such prosthetic devices as are essential to obtaining or retaining employment;

"(4) maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;

"(5) tools, equipment, initial stocks and supplies (including equipment and initial stocks and supplies for vending stands), books, and training materials, to any or all of which the State may retain legal title; and

"(6) transportation (except where necessary in connection with determination of eligibility or nature and scope of services) and occupational licenses.

Such term also includes—

"(7) the acquisition of vending stands or other equipment and initial stocks and supplies for use by severely handicapped individuals in any type of small business the operation of which will be improved through management and supervision by the State agency; and

"(8) the establishment of public and other nonprofit rehabilitation facilities to provide services for physically handicapped individuals and the establishment of public and other nonprofit workshops for the severely handicapped.

"(b) The term 'physically handicapped individual' means any individual who is under a physical or mental disability which constitutes a substantial handicap to employment, but which is of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a remunerative occupation. "Physically handicapped individuals."

"(c) The term 'rehabilitation facility' means a facility operated for the primary purpose of assisting in the rehabilitation of physically handicapped individuals— "Rehabilitation facility."

"(1) which provides one or more of the following types of services:

"(A) testing, fitting, or training in the use of prosthetic devices;

"(B) prevocational or conditioning therapy;

"(C) physical or occupational therapy;

"(D) adjustment training; or

"(E) evaluation or control of special disabilities; or

"(2) through which is provided an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision: *Provided*, That the major portion of such evaluation and services is furnished within the facility and that all medical and related health services are prescribed by, or are under the formal supervision of, persons licensed to practice medicine or surgery in the State.

"(d) The term 'workshop' means a place where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing remunerative employment to severely handicapped individuals who cannot be readily absorbed in the competitive labor market. "Workshop."

"(e) The term 'nonprofit', when used with respect to a rehabilitation facility or a workshop, means a rehabilitation facility and a workshop, respectively, owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the "Nonprofit."

All 68 Stat. 661.

income of which is exempt from taxation under section 101 (6) of the Internal Revenue Code.

- Establishment. "(f) Establishment of a workshop or rehabilitation facility means—
- Workshop. "(1) in the case of a workshop, the expansion, remodeling, or alteration of existing buildings, necessary to adapt such buildings to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops or to increase the employment opportunities in workshops; and
- Rehabilitation facility. "(2) in the case of a rehabilitation facility, the expansion, remodeling, or alteration of existing buildings, and initial equipment of such buildings, necessary to adapt such buildings to rehabilitation facility purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may by regulations prescribe in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance to States in the construction of such facilities) and initial staffing thereof (for a period not exceeding one year).
- "State." "(g) The term 'State' includes Alaska, the District of Columbia, Hawaii, the Virgin Islands, and Puerto Rico, and for purposes of section 4, includes also Guam.
- "Allotment percentage." "(h) (1) The 'allotment percentage' for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the continental United States (excluding Alaska), except that (A) the allotment percentage shall in no case be more than 75 per centum or less than  $33\frac{1}{3}$  per centum, and (B) the allotment percentage for Hawaii shall be 50 per centum, and the allotment percentage for Alaska, Puerto Rico, and the Virgin Islands shall be 75 per centum.
- "(2) The allotment percentages shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the continental United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after the enactment of the Vocational Rehabilitation Amendments of 1954, which promulgation shall be conclusive for the three fiscal years in the period ending June 30, 1957.
- "Federal share." "(i) The 'Federal share' for any State for any fiscal year (other than the fiscal year ending June 30, 1954) shall be 100 per centum less that percentage which bears the same ratio to 40 per centum as the per capita income of such State bears to the per capita income of the continental United States (excluding Alaska), except that (A) the Federal share shall in no case be more than 70 per centum or less than 50 per centum, and (B) the Federal share for Hawaii and Alaska shall be 60 per centum, and the Federal share for Puerto Rico and the Virgin Islands shall be 70 per centum. In computing the Federal share of a State for a year, the Secretary shall use the same figures for per capita incomes of the States and of the United States as he used in computing the allotment percentage of such State for such year.
- "(j) The population of the several States shall be determined on the basis of the latest figures furnished by the Department of Commerce.
- "Secretary." "(k) The term 'Secretary', except when the context otherwise requires, means the Secretary of Health, Education, and Welfare.
- State population.

“TRANSITION PROVISIONS

“SEC. 12. (a) In the case of any State which, immediately prior to July 1, 1954, was carrying on a vocational rehabilitation program under a State plan approved under this Act, such State plan shall be deemed to be a State plan approved under section 5 of this Act until (1) the Secretary finds, after reasonable notice and opportunity for a hearing to the State agency, that such plan has been so changed that it no longer complies with any provision required to be included in such plan under this Act as in effect prior to the enactment of the Vocational Rehabilitation Amendments of 1954, or in the administration of such plan there is a failure to comply substantially with any such provision, or (2) the plan is superseded by a plan approved under section 5 of this Act, or (3) July 1, 1955, whichever occurs first.

“(b) Sums appropriated for grants to States for the fiscal year ending June 30, 1955, pursuant to the Vocational Rehabilitation Act in effect prior to the enactment of the Vocational Rehabilitation Amendments of 1954 (including the portion of sums made available to the Secretary for rehabilitation services in the District of Columbia) shall be deemed to have been made available for grants to States under section 2 of this Act. Payments made from such sums to a State prior to the enactment of the Vocational Rehabilitation Amendments of 1954 (including payments made from such sums before or after such enactment for vocational rehabilitation services in the District of Columbia) shall be deemed to have been paid under this Act from the State’s allotment under such section 2.

“SHORT TITLE

“SEC. 13. This Act may be cited as the ‘Vocational Rehabilitation Act’.”

VOCATIONAL REHABILITATION PROGRAM IN THE DISTRICT OF COLUMBIA

SEC. 3. (a) The personnel, property, and records which the Director of the Bureau of the Budget determines relate primarily to the provision of vocational rehabilitation services in the District of Columbia or the performance of functions of a State licensing agency under the Act of June 20, 1936 (20 U. S. C., ch. 6A), shall be transferred, within ninety days after the enactment of this Act, from the Department of Health, Education, and Welfare to the municipal government of the District of Columbia for use in providing such services and performing such functions in the District of Columbia. Transfer to D. C. government. 49 Stat. 1559.

(b) The Board of Commissioners of the District of Columbia is hereby authorized, within available appropriations and allotted funds, to take such action as may be necessary to secure for the District of Columbia the benefits of the Vocational Rehabilitation Act, as amended by this Act, and the Act of June 20, 1936 (20 U. S. C., ch. 6A). 41 Stat. 735. 29 USC 41.

(c) Notwithstanding anything to the contrary in section 2 or any other provision of this Act, the Secretary of Health, Education, and Welfare is authorized to continue the performance of functions relating to the provision of vocational rehabilitation services in the District of Columbia and to use appropriations available therefor until completion of the transfer provided in subsection (a) in like manner as such functions were being performed and appropriations used by such Secretary immediately prior to the enactment of this Act.

AMENDMENTS TO THE RANDOLPH-SHEPPARD VENDING STAND ACT

Blind persons.  
Vending stand  
operation.

SEC. 4. (a) The first section of the Act entitled "An Act to authorize the operation of stands in Federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes", approved June 20, 1936, as amended (20 U. S. C., sec. 107), is amended to read as follows: "That for the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of this Act shall be authorized to operate vending stands on any Federal property where such vending stands may be properly and satisfactorily operated by blind persons. In authorizing the operation of vending stands on Federal property, preference shall be given, so far as feasible, to blind persons licensed by a State agency as provided in this Act; and the head of each department or agency in control of the maintenance, operation, and protection of Federal property shall, after consultation with the Secretary, and with the approval of the President, prescribe regulations designed to assure such preference (including assignment of vending machine income to achieve and protect such preference) for such licensed blind persons without unduly inconveniencing such departments and agencies or adversely affecting the interests of the United States."

Concession-stand  
opportunities.

(b) (1) Section 2 (a) of such Act of June 20, 1936, as amended (20 U. S. C., sec. 107a), is amended by striking out "in Federal and other buildings" where it appears in paragraph (1) and inserting in lieu thereof "on Federal and other property", and by amending paragraph (4) to read as follows:

State licensing  
agencies.

"(4) Designate as provided in section 3 of this Act the State commission for the blind in each State, or, in any State in which there is no such commission, some other public agency to issue licenses to blind persons who are citizens of the United States and at least twenty-one years of age for the operating of vending stands on Federal and other property in such State for the vending of newspapers, periodicals, confections, tobacco products, articles dispensed automatically or in containers or wrapping in which they are placed before receipt by the vending stand, and such other articles as may be approved for each property by the department or agency in control of the maintenance, operation, and protection thereof and the State licensing agency in accordance with the regulations prescribed pursuant to the first section: *Provided*, That (A) effective four years after the enactment of the Vocational Rehabilitation Amendments of 1954, in any State having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act, the licensing agency to be designated hereunder shall be the State agency designated pursuant to section 5 (a) (1) of such Act as the sole State agency with respect to vocational rehabilitation of the blind; and (B) prior to such time, no license shall be granted except upon certification by a vocational rehabilitation agency that the individual is qualified to operate a vending stand."

Restrictions.

29 USC 41.

29 USC 35.

HEW regulations.

20 USC 107a(b).

20 USC 107a(c).

Location and  
type of stand.

(2) Paragraph (5) of such subsection is amended by inserting "including the issuance of rules and regulations," after "steps".

(c) Section 2 (b) of such Act of June 20, 1936, as amended, is amended by striking out the third sentence thereof.

(d) Section 2 (c) of such Act of June 20, 1936, as amended, is amended to read as follows:

"(c) The State licensing agency designated by the Secretary is authorized, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the Federal property on which the stand is to be located but subject to regulations

prescribed pursuant to the first section, to select a location for such stand and the type of stand to be provided."

(e) Section 3 of such Act of June 20, 1936, as amended (20 U. S. C., sec. 107b), is amended to read as follows:

"SEC. 3. A State commission for the blind or other State agency desiring to be designated as the licensing agency shall, with the approval of the chief executive of the State, make application to the Secretary and agree—

State licensing agency.  
Application for designation.

"(1) to cooperate with the Secretary in carrying out the purpose of this Act;

"(2) to provide for each licensed blind person such vending stand equipment, and adequate initial stock of suitable articles to be vended therefrom, as may be necessary: *Provided, however,* That such equipment and stock may be owned by the licensing agency for use of the blind, or by the blind individual to whom the license is issued: *And provided further,* That if ownership of such equipment is vested in the blind licensee, (A) the State licensing agency shall retain a first option to repurchase such equipment and (B) in the event such individual dies or for any other reason ceases to be a licensee or transfers to another vending stand, ownership of such equipment shall become vested in the State licensing agency (for transfer to a successor licensee) subject to an obligation on the part of the State licensing agency to pay to such individual (or to his estate) the fair value of his interest therein as later determined in accordance with regulations of the State licensing agency and after opportunity for a fair hearing.

"(3) that if any funds are set aside, or caused to be set aside, from the proceeds of the operation of the vending stands such funds shall be set aside, or caused to be set aside, only to the extent necessary for and may be used only for the purposes of (A) maintenance and replacement of equipment; (B) the purchase of new equipment; (C) management services; and (D) assuring a fair minimum return to operators of vending stands: *Provided, however,* That in no event shall the amount of such funds to be set aside from the proceeds of any vending stand exceed a reasonable amount which shall be determined by the Secretary;

"(4) to make such reports in such form and containing such information as the Secretary may from time to time require and to comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports;

"(5) to issue such regulations, consistent with the provisions of this Act, as may be necessary for the operation of this program;

"(6) to provide to any blind licensee dissatisfied with any action arising from the operation or administration of the vending stand program an opportunity for a fair hearing."

(f) Section 6 of such Act of June 20, 1936, as amended (20 U. S. C., sec. 107e), is amended by adding at the end thereof the following new subsections:

"(d) The term 'Federal property' means any building, land, or other real property owned, leased, or occupied by any department or agency of the United States or any instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any Territory or possession of the United States.

"Federal property."

"(e) The term 'Secretary' means the Secretary of Health, Education, and Welfare."

"Secretary."

(g) Such Act of June 20, 1936, as amended, is amended by renumbering section 7 as section 8, and by inserting immediately after section 6 the following new section:

20 USC 107f.

All 68 Stat. 665.

State acting as  
licensing  
agency before  
July 1, 1954.  
Status.

"SEC. 7. In the case of any State which, immediately prior to July 1, 1954, was performing the functions of a State licensing agency pursuant to an application for designation approved under this Act, such application shall be deemed to be an application approved under section 3 of this Act, as amended by the Vocational Rehabilitation Amendments of 1954, until (1) the Secretary finds, after reasonable notice and opportunity for a hearing to the State licensing agency, that the provisions contained in such application have been changed so that it no longer complies with any provisions required to be included in such application under this Act, as in effect prior to July 1, 1954, or that in the administration of the program there is a failure to comply substantially with any such provision, or (2) the application is superseded by an application approved under section 3 of this Act after July 1, 1954, or (3) July 1, 1955, whichever first occurs."

PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE PHYSICALLY  
HANDICAPPED

Appropriation.

SEC. 5. The joint resolution entitled "Joint resolution authorizing an appropriation for the work of the President's Committee on National Employ the Physically Handicapped Week", approved July 11, 1949 (63 Stat. 409), is amended by striking out "\$75,000" and inserting in lieu thereof "\$225,000".

UNITED STATES EMPLOYMENT SERVICES

48 Stat. 114.

SEC. 6. (a) The first sentence of subsection (a) of section 3 of the Act of June 6, 1933, as amended (29 U. S. C., sec. 49b), is hereby amended by inserting after "gainful occupations," the following: "including employment counseling and placement services for handicapped persons."

(b) Section 8 of such Act, as amended (29 U. S. C., sec. 49g), is further amended by inserting after the first sentence thereof a new sentence to read as follows: "Such plans shall include provision for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons, and for the designation of at least one person in each State or Federal employment office, whose duties shall include the effectuation of such purposes."

HOMEBOUND PHYSICALLY HANDICAPPED INDIVIDUALS

Study of ex-  
isting pro-  
grams.

SEC. 7. The Secretary of Health, Education, and Welfare shall make a thorough study of existing programs for teaching and training handicapped persons, commonly known as shut-ins, whose disabilities confine them to their homes or beds, for the purpose of ascertaining whether additional or supplementary programs or services are necessary, particularly in rural areas, in order to provide adequate general ameliorative and vocational training for such handicapped persons. The Secretary shall report to the Congress not later than six months after the date of enactment of this Act the results of such study, together with such recommendations as may be desirable.

Report to  
Congress.

EFFECTIVE DATE

SEC. 8. The amendments made by this Act shall become effective July 1, 1954.

Approved August 3, 1954.

CHAPTER 64, LAWS OF 1955

CHAPTER 64

An Act to establish a rehabilitation commission to provide for, promote and assist in the rehabilitation of disabled persons, and repealing sections 34:16-1, 34:16-2, 34:16-3, 34:16-4, 34:16-5, 34:16-6, 34:16-7, 34:16-8, 34:16-9, 34:16-10, 34:16-11, 34:16-12, 34:16-13, 34:16-14, 34:16-15, 34:16-16, 34:16-17, 34:16-18, 34:16-19, 18:17-7, 18:17-8 and 18:17-9 of the Revised Statutes; and to repeal "An act authorizing the New Jersey Rehabilitation Commission to appoint therein special examiners to serve tuberculous persons," approved May 24, 1941 (P. L. 1941, c. 155); and repealing section 22 of the "Department of Labor and Industry Act of 1948," approved October 21, 1948 (P. L. 1948, c. 446).

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this chapter: -

C. 34:16-20.  
Terms  
defined.

"Commission" means the State Rehabilitation Commission, Department of Labor and Industry, for the rehabilitation of physically handicapped persons.

"Maintenance" means payments to cover the handicapped individual's basic living expenses, such as: food, shelter, clothing, health, maintenance, and other subsistence expenses essential to achievement of individual's vocational rehabilitation objective.

"Physically handicapped individual" means any individual who is under a physical or mental disability which constitutes a substantial handicap to employment, but which is of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a remunerative occupation.

"Resident" means any person who is and has been domiciled within the State for 1 year or more, or who presents reasonable evidence of an intention to be a domiciliary of the State.

"Prosthetic device" means any appliance designed to support or take the place of a part of the body, or to increase the acuity of a sensory organ.

"Vocational rehabilitation services" means diagnostic and related services (including transportation) incidental to the determination of eligibility for and the nature and scope of services to be provided; training, guidance and placement services for physically handicapped individuals; and in the case of any such individual found to require financial assistance with respect thereto, after full consideration of his eligibility for any similar benefit by way of pension, compensation, and insurance, any other goods and services necessary to render such individual fit to engage in a remunerative occupation (including remunerative homebound work), including but not limited to the following physical restoration and other goods and services:

(1) Corrective surgery or therapeutic treatment to correct or improve a physical or mental condition which constitutes a substantial handicap to employment;

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- (2) Necessary hospitalization in connection with surgery or treatment specified in paragraph 1;
- (3) Such prosthetic devices as are essential to obtaining or retaining employment;
- (4) Maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;
- (5) Tools, equipment, initial stocks and supplies, including equipment and initial stocks and supplies for vending stands;
- (6) Books and training materials;
- (7) Occupational licenses;
- (8) Transportation (except where necessary in connection with determination of eligibility or nature and scope of services).  
Such term also includes:
  - (9) Acquisition of vending stands or other equipment, and initial stocks and supplies for small business enterprises conducted by severely handicapped individuals under the supervision of the State agency;
  - (10) The establishment of public and other non-profit rehabilitation facilities to provide services for physically handicapped individuals and the establishment of public and other nonprofit workshops for the severely handicapped.

"Rehabilitation facility" means a facility operated for the primary purpose of assisting in the rehabilitation of physically handicapped individuals, (1) which provides 1 or more of the following types of service: testing, fitting, or training in the use of prosthetic devices; prevocational or conditioning therapy; physical or occupational therapy adjustment training; evaluation, treatment, or control of special disabilities; or (2) through which is provided an integrated program of medical, psychological, social and vocational evaluation and services under competent professional supervision; provided, that the major portion of such evaluation and service is furnished within the facility, and that all medical and related health services are prescribed by, or under the formal supervision of, persons licensed to practice medicine or surgery in the State.

"Workshop" means a place where any manufacture or handiwork is carried on, and which is operated for the primary purpose of providing remunerative employment to severely handicapped individuals (1) as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or (2) during such time as employment opportunities for them in the competitive labor market do not exist.

"Remunerative occupation" includes employment in the competitive labor market; practice of a profession; self-employment; home-making, farm or family work (including work for which payment is in kind rather than cash); sheltered employment; and home industries or other homebound work of a remunerative nature.

C. 34:16-21.  
Rehabilitation  
commission  
established  
members.

2. There is hereby established the Rehabilitation Commission which is placed in the Department of Labor and Industry for house-keeping purposes. The commission is hereby designated as the sole State agency to administer and supervise vocational rehabilitation authorized by this chapter. The commission shall consist of the

Commissioner of Labor and Industry, the Commissioner of Education, the Commissioner of the Department of Institutions and Agencies and 8 members appointed by the Governor.

Of the 8 members so appointed by the Governor, 1 and only 1 shall be a person who by reason of vocation, activities and affiliations can be considered as a representative of the employers of labor of the State. One member, and only 1, shall be a person who by reason of vocation, activities and affiliations can be considered as a representative of organized labor of the State. Two members, 1 of whom shall be a woman, shall be chosen because of their special interest in and knowledge of the problem of the care, treatment and education of crippled children.

C. 34:16-22.  
Chairman

3. The chairman of the commission shall be the Commissioner of Labor and Industry of the State of New Jersey.

C. 34:16-23.  
Members' terms.

4. Of the members of the commission appointed by the Governor, the first members shall be appointed, 3 for 1 year, 3 for 2 years, 2 for 3 years, and their successors shall be appointed for terms of 3 years. The members so appointed shall hold over until their respective successors are appointed and shall qualify. Vacancies shall be filled for the unexpired terms only.

C. 34:16-24.  
No compensation, expenses paid.

5. The members of the commission shall serve without pay but actual expenses incurred in the performance of their duties shall be paid out of funds appropriated for the purposes of the commission.

C. 34:16-25.  
Removal of member.

6. The Governor may at any time remove for inefficiency or neglect of duty any member of the commission appointed by him, charges in writing having been preferred and sustained after public hearing.

C. 34:16-26.  
Annual report.

7. The commission shall annually make report to the Governor of its work in carrying out the provisions of this chapter and shall submit to him its recommendations concerning legislation and a statement of the sum necessary for such work for the ensuing year.

C. 34:16-27.  
Powers and duties of commission.

8. The commission shall be authorized to:  
(a) Adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this act.  
(b) Provide vocational rehabilitation services, directly or through public or private instrumentalities to eligible resident handicapped individuals without discrimination as to sex, race, color, creed or national origin, excepting blind persons under the care of the State commission to ameliorate the condition of the blind, deaf persons under the care of the State School for Deaf-mutes, and persons who in the judgment of the commission are not feasible of rehabilitation. In case vocational rehabilitation services cannot be provided all eligible handicapped persons who apply for such services, the commission shall provide, by regulation, the order to be followed in selecting those to whom such services will be provided.

(c) Establish and operate rehabilitation facilities and workshops and make grants to public and other nonprofit organizations for such purposes.

(d) Establish and supervise the operation of vending stands and other small businesses established pursuant to this act to be conducted by severely handicapped individuals.

(e) Make studies, investigations, demonstrations, and reports, and provide training and instruction (including the establishment and maintenance of such research fellowships and traineeships with such stipends and allowances as may be deemed necessary) in matters relating to vocational rehabilitation.

(f) Enter into reciprocal agreements with other States to provide for the vocational rehabilitation of residents of the States concerned.

(g) Accept and use gifts made, by will or otherwise, for carrying out the purposes of this chapter. Gifts made under such conditions as in the judgment of the commission are proper and consistent with the provisions of this chapter, may be accepted, held, invested, reinvested, or used in accordance with the conditions, if any, of the gift.

(h) Take such action as it deems necessary or appropriate to carry out the purposes of this act.

C 34:16-28.  
Director to  
devote full  
time to adminis-  
tration of  
program

9. The commission shall appoint a director, who shall be its executive officer and have primary responsibility for, and shall devote his full time to the administration of the program, and who shall employ such staff and special assistants as may be necessary to carry out the purposes and objects of this chapter. The chairman of the commission shall be the individual with whom the director shall consult when the commission is not in session. Notwithstanding the provisions of this act or any other law to the contrary, the director and all employees and special assistants shall be appointed pursuant to the provisions of Title 11, Civil Service, and shall continue to be subject thereto.

10. The commission is also authorized:

C. 34:16-29.  
Functions of  
commission.

(a) To co-operate with the Federal Government in carrying out the purposes of any Federal statutes pertaining to vocational rehabilitation and to adopt such methods of administration as are found by the Federal Government to further the proper and efficient operation of agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such Federal statutes.

(b) To co-operate with and utilize the services of the State agency or agencies administering the State's Public Assistance program, the Federal Bureau of Old-Age and Survivors' Insurance (Department of Health, Education and Welfare), and other public and private agencies providing services related to vocational rehabilitation, and with the State system of public employment offices in the State, and shall make maximum feasible utilization of the job placement and employment counseling services and other services and facilities of such offices.

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(c) To co-operate with and make grants to political subdivisions, other public and nonprofit organizations and agencies, for the establishment of workshops and rehabilitation facilities, and in providing vocational rehabilitation services to utilize such facilities meeting the standards established by the commission.

(d) Upon designation by the Governor, to perform other related functions and services for the Federal Government, including making determinations of disability under Title II of the Federal Social Security Act.

C. 34:16-30.  
State  
Treasurer  
custodian  
of funds.

11. The State Treasurer is hereby designated as the custodian of all funds received from the Federal Government for the purpose of carrying out any Federal statutes pertaining to vocational rehabilitation or any agreement authorized by this chapter. The State Treasurer shall make disbursements from such funds and from all State funds available for vocational rehabilitation purposes upon certification by the commission.

C. 34:16-31.  
Hearings.

12. Any individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the commission shall be entitled in accordance with regulations to a hearing by the commission.

C. 34:16-32.  
Bars political  
activities by  
officers and  
employees.

13. No officer or employee engaged in the administration of the vocational rehabilitation program shall use his official authority to influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose. No such officer or employee shall solicit or receive, nor shall any officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. Any officer or employee violating this provision shall be subject to discharge or suspension.

C. 34:16-33.  
Records  
confidential.

14. All records relating to the receipt of or application for vocational rehabilitation services shall be confidential and shall not be published or open to public inspection. No member, officer or employee of the commission shall, except for purposes directly connected with the administration of the vocational rehabilitation program, and in accordance with regulations solicit, disclose, receive or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or names of, or any information concerning persons applying for or receiving vocational rehabilitation, directly or indirectly derived from the records, papers, files, or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any such act on the part of a member, officer or employee of the commission shall be grounds for dismissal by the Governor as to members and as to officers and employees, in accordance with the provisions of Title 11, Civil Service, of the Revised Statutes and of rules and regulations issued pursuant thereto.

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- C. 34:16-34. Legislative reservations. 15. The Legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this act at any time.
- C. 34:16-35. Provisions severable. 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.
- C. 34:16-36. Construed liberally. 17. The provisions of this chapter shall be liberally construed in order that its purposes and objects may be fully effectuated.
- C. 34:16-37. Repealer. 18. Sections 34:16-1, 34:16-2, 34:16-3, 34:16-4, 34:16-5, 34:16-6, 34:16-7, 34:16-8, 34:16-9, 34:16-10, 34:16-11, 34:16-12, 34:16-13, 34:16-14, 34:16-15, 34:16-16, 34:16-17, 34:16-18, 34:16-19, 18:17-6, 18:17-7, 18:17-8, and 18:17-9 of the Revised Statutes and "An act authorizing the New Jersey Rehabilitation Commission to appoint therein special examiners to serve tuberculous persons," approved May 24, 1941 (P. L. 1941, c. 155), and section 22 of the "Department of Labor and Industry Act of 1948," approved October 21, 1948 (P. L. 1948, c. 446), are repealed.
- C. 34:16-38. Short title. 19. This act shall be known and may be cited as the "Vocational Rehabilitation Act of 1955."
20. This act shall take effect immediately.

Approved June 13, 1955.

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P  
Y

38-40 South Clinton Avenue  
Trenton 5, New Jersey  
P. O. Box #845  
May 5, 1959

Honorable Edward J. Patten  
Secretary of State  
State House  
Trenton, New Jersey

Dear Mr. Patten:

At a regular meeting of the New Jersey Rehabilitation Commission on April 29, 1959, a regulation providing for the order to be followed in selecting clients was adopted. Copies of the regulation are herewith transmitted to your office for promulgation.

Sincerely yours,

W. SELIGMAN  
Acting Director

WS/RS  
Encs.

III. VOTING, Cont.

- B. Members of the Commission may not delegate to other persons their power of voting or power to perform other acts discretionary or semi-judiciary. (Refer Att. Gen. opinion, Oct. 1955 minutes.)

IV. ORDER TO BE FOLLOWED IN SELECTING CLIENTS

- A. Except during periods when appropriations are insufficient to provide services to all eligible handicapped, clients' needs will be met, insofar as possible, in the order of their application for service.
- B. The Director may discontinue authorizations for new, purchased client services when the funds remaining equal the amount needed for normal diagnostic services during the remainder of the fiscal year plus an estimated two percent of the year's appropriation for client services. At this point, the remaining funds may be used for the purchase of diagnostic information necessary in determinations of eligibility and such funds as may remain may be devoted to the provision of purchased client services in instances of "personal hardship" as defined by the Director.