

1 **CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER**
2 **INDIVIDUALS WHO ARE BLIND**

3
4 **ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
5 ***REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE**
6 **CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED**
7 **BY THE *TEXAS REGISTER*.**

8
9 **ON JULY 31, 2018, THE TEXAS WORKFORCE COMMISSION ADOPTED THE**
10 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
11 ***REGISTER*.**

12
13 Estimated date of publication in the *Texas Register*: **August 17, 2018**
14 The rules will take effect: **August 21, 2018**

15
16 The Texas Workforce Commission (TWC) adopts new Chapter 853, relating to
17 Independent Living Services for Older Individuals Who Are Blind (ILS-OIB), without
18 changes, as published in the May 4, 2018, issue of the *Texas Register* (43 TexReg 2722),
19 comprising the following subchapters:

- 20
21 Subchapter A. Independent Living Services for Older Individuals Who Are Blind,
22 §853.1 - §853.6
23 Subchapter B. Services, §853.10 and §853.11
24 Subchapter C. Customer Financial Participation, §853.20 - §853.22
25 Subchapter D. Case Documentation, §853.30
26 Subchapter E. Customer's Rights, §853.40 and §853.41
27

28 **PART I. PURPOSE AND BACKGROUND**

29 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

30
31 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

32 The purpose of the new Chapter 853 rules is to develop rules to establish the Independent
33 Living Services for Older Individuals Who Are Blind (ILS-OIB) services as in-house
34 services delivered by TWC. As transferred to TWC in 2016, these rules, found at Subchapter
35 D of current TWC Chapter 854 rules, regarding the Division for Blind Services, supported
36 plans for this program to be outsourced through an agreement between the Texas Workforce
37 Commission (TWC) and the Texas Health and Human Services Commission (HHSC).
38 However, following input from the federal Rehabilitation Services Administration (RSA), it
39 was decided that TWC would deliver ILS-OIB services in-house. Therefore, new Chapter
40 853 is proposed to reflect this service delivery model. New Chapter 853 will contain all
41 rules for the ILS-OIB program. In a separate, but concurrent rulemaking, TWC proposes
42 the repeal of Chapter 854, Subchapter D.
43

44 Additionally, the adopted amendments are necessary to comply with Texas Labor Code
45 §352.101, which required TWC to integrate the two separate vocational rehabilitation
46 (VR) programs--VR for individuals with visual impairments (Blind Services) and VR for

1 individuals with other disabilities (Rehabilitation Services)--into a single VR program.
2 Consistent with §352.101, on October 1, 2017, the VR programs for individuals with
3 visual impairments and for individuals with other disabilities became integrated into a
4 single VR program. The rules to support this integration were effective November 6,
5 2017.

6
7 With the transfer of VR services from the Texas Department of Assistive and
8 Rehabilitative Services (DARS) to TWC, references within the ILS-OIB rules are no
9 longer consistent with state law. For example, Chapter 854 contains many references to
10 DARS and its organizational structure, and incorporates DARS' terminology, such as
11 referring to individuals receiving services as "consumers." TWC proposes amendments to
12 replace the outdated agency and division names and position titles, as well as references
13 to state statutes and rules in Chapter 854, now being moved to Chapter 853. TWC also
14 proposes to replace the word "consumer" with "customer" to be consistent with TWC
15 terminology.

16 17 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

18 19 **SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER** 20 **INDIVIDUALS WHO ARE BLIND**

21 **TWC adopts new Subchapter A, Independent Living Services for Older Individuals**
22 **Who Are Blind, as follows:**

23 24 **§853.1. Definitions**

25 New §853.1 replaces repealed §854.112 and updates its provisions to include the
26 definitions needed to make administration of the ILS-OIB program consistent with
27 federal regulations at 34 CFR Part 367. The definition for "blind" is taken from state law
28 at Human Resources Code §91.002(2). The definition for "low vision" is taken from
29 §91.002(5), with modifications to describe the condition and include a combination of
30 visual limitations. To ensure consistent application of customer participation and provide
31 transparency, the term "Federal Poverty Guidelines" includes a legal citation in its
32 definition. The rule also adds a reference to the definitions in state law and federal
33 regulations relating to services, updates the division name, and replaces the word
34 "consumer" with "customer."

35 36 **§853.2. Referral**

37 New §853.2 identifies the referral phase, the information needed to initiate a referral, and
38 the potential referral sources for ILS-OIB services. It also explains that minimal services
39 can be provided in the referral phase, but that full delivery of ILS-OIB services is
40 conditional upon receipt of a completed application from an individual meeting all
41 eligibility requirements.

42 43 **§853.3. Accessible Communication**

44 New §853.3, relating to accessible communication, underscores TWC's commitment to
45 providing members of the public who have disabilities and are seeking information or
46 other TWC services access to and use of electronic and information resources comparable

1 to the access and use provided to members of the public without disabilities, unless such
2 access imposes a significant difficulty or expense on TWC under Texas Government
3 Code §2054.460. The rule explains that applicants and customers are entitled to request
4 and to receive communication relating to ILS-OIB services in alternate formats or by
5 alternate methods.

6
7 **§853.4. Application**

8 New §853.4 relates to the process of application for the ILS-OIB program and specifies
9 that a complete application requires a signature, all the information necessary to initiate
10 an assessment of eligibility, and the customer's availability to complete the assessment.

11
12 **§853.5. Eligibility**

13 New §853.5 replaces repealed §854.131 and updates its provisions to establish the
14 eligibility criteria that must be met for a customer to receive ILS-OIB services. This
15 includes the requirement for a completed and signed application before eligibility can be
16 determined. The section also addresses data sources for information such as the Social
17 Security Administration, education records, and data that come directly from the
18 applicant and the applicant's family. TWC requires a substantive evaluation of the
19 documentation and the application to meet eligibility requirements. An eligibility
20 decision is made within 60 days, unless there are unforeseen circumstances.

21
22 **§853.6. Ineligibility Determination**

23 New §853.6 adds that ineligibility can be determined only after a completed application
24 and documentation are obtained and a substantive evaluation is performed. Customers
25 can appeal an ineligibility determination within TWC. Customers must be provided
26 information on the Client Assistance Program (CAP) operated by Disability Rights Texas
27 (DRTx).

28
29 **SUBCHAPTER B. SERVICES**

30 **TWC adopts new Subchapter B, Services, as follows:**

31
32 **§853.10. Independent Living Plan**

33 New §853.10 replaces repealed §854.132 and updates its provisions to add information
34 about the Independent Living Plan (ILP) that is developed between the customer and staff
35 serving Older Individuals Who Are Blind (OIB staff). This plan must be developed and
36 agreed to within 90 days of eligibility determination. The plan guides customer services
37 and goals and specifies progress in meeting the customer's objectives. The plan is
38 reviewed at least once each year. A customer can waive the receipt of a written plan;
39 however, OIB staff must maintain a written ILP in the customer's electronic record.

40
41 **§853.11. Scope of Services**

42 New §853.11 replaces repealed §854.134 and updates its provisions to provide a listing
43 of the services available to ILS-OIB customers, subject to budget constraints of the
44 program. The list includes services provided directly by TWC, as well as those services
45 for which the customer is referred to other entities. Services are based on 29 USC
46 §705(17) and 34 CFR §367.3.

1
2 **SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION**

3 **TWC adopts new Subchapter C, Customer Financial Participation, as follows:**

4
5 **§853.20. Individuals Who Receive Social Security Income or Social Security**
6 **Disability Insurance**

7 New §853.20 specifies that, based on 34 CFR §367.67, customers who are recipients of
8 Social Security Income (SSI) or Social Security Disability Insurance (SSDI) are not
9 required to participate in the financial costs of the service through the customer financial
10 participation system.

11
12 **§853.21. Customer Participation in the Cost of Services**

13 New §853.21 replaces repealed §854.140 and updates its provisions to add that OIB staff
14 provides independent living services at no cost to customers, retaining the business
15 practice in place previously at DARS, the predecessor agency. Under 34 CFR §367.67(a),
16 a state is neither required to charge nor prohibited from charging customers for ILS-OIB
17 services. However, 34 CFR §367.67(b) establishes that, where a state chooses to allow
18 other service providers to charge customers for ILS-OIB services, a state's policies must
19 meet certain criteria to assure transparency, equal treatment, and access to services.
20 Additional services may be provided and the customer's fee predetermined and agreed on
21 by the customer. The customer's participation agreement will be based on information
22 about the customer's household size, annual gross income, allowable deductions,
23 comparable services or benefits, and the Federal Poverty Guidelines at
24 <https://aspe.hhs.gov/poverty-guidelines>.

25
26 New §853.21 also sets forth requirements and conditions related to:

- 27 --customer or customer representative provision of the information or choice not to
- 28 provide the information, in which case the customer shall pay the entire cost of services;
- 29 --reporting changes to any of the information provided as soon as possible and signing a
- 30 new customer participation agreement thereupon;
- 31 --the stipulation that any adjusted fee takes effect at the beginning of the following month
- 32 and is not retroactive;
- 33 --the requirement for OIB staff to develop a process for reconsidering and adjusting the
- 34 customer's fee in the event of documented extraordinary circumstance;
- 35 --a list of such circumstances; and
- 36 --stipulations on the use of customer participation fees.

37
38 **§853.22. Availability of Comparable Services and Benefits**

39 New §853.22(a) specifies that if comparable services or benefits are available to the
40 customer under any other program, the customer must use those benefits first. This
41 includes services that are included under the customer's medical and dental insurance,
42 including government insurance.

43
44 New §853.22(b) stipulates that TWC must not make this determination in cases in which:

- 45 --comparable services or benefits might exist under another program, but are not
- 46 available to the customer at the time needed; and

1 --determining the availability of the comparable services and benefits under another
2 program would delay the provision of services to customers who could be at medical risk;
3 or
4 --the determination would interrupt or delay progress toward achieving the customer's
5 ILP goals.
6

7 **SUBCHAPTER D. CASE DOCUMENTATION**

8 **TWC adopts new Subchapter D, Case Documentation, as follows:**
9

10 **§853.30. Case Closure**

11 New §853.30 adds that ILS-OIB services are typically completed within 18 months. Case
12 closure can also occur when the customer meets certain circumstances, set forth in
13 paragraphs (1) - (8). Customers are informed of case closure, and there is an avenue for
14 appeal. Post-closure services can be provided for up to six months.
15

16 **SUBCHAPTER E. CUSTOMER'S RIGHTS**

17 **TWC adopts new Subchapter E, Customer's Rights, as follows:**
18

19 **§853.40. Rights of Customers**

20 New §853.40 replaces repealed §854.150 and updates its provisions to provide
21 safeguards for TWC customers on their rights to appeal any aspect of eligibility
22 determination, service delivery, customer participation, or any other aspect of ILS-OIB
23 services. The right to file a complaint with the CAP is specified in accordance with CFR
24 §367.68 and 29 USC §717.
25

26 **§853.41. Right to Appeal**

27 New §853.41 provides notice that a customer has a right to appeal in accordance with
28 TWC Chapter 850 rules, relating to Vocational Rehabilitation Services Administrative
29 Rules and Procedures.
30

31 No comments were received.
32

33 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to
34 be within TWC's legal authority to adopt.
35

36 The new rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which
37 provide TWC with the authority to adopt, amend, or repeal such rules as it deems
38 necessary for the effective administration of TWC services and activities.
39

40 The new rules affect Title 4, Texas Labor Code, particularly Chapter 351.
41
42

1
2 **CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER**
3 **INDIVIDUALS WHO ARE BLIND**

4
5 **SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER**
6 **INDIVIDUALS WHO ARE BLIND**

7
8 **§853.1. Definitions.**

9
10 In addition to the definitions contained in Texas Labor Code §352.001, 34 CFR
11 §361.5, and §856.3 of the Agency's Division for Rehabilitation Services rules, the
12 following words and terms, when used in this chapter, shall have the following
13 meanings:

- 14
15 (1) Act--The Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).
16
17 (2) Adjusted income--The dollar amount that is equal to a household's
18 annual gross income, minus allowable deductions.
19
20 (3) Applicant--An individual who applies for Independent Living Services
21 for Older Individuals Who Are Blind (ILS-OIB) services.
22
23 (4) Attendant care--A personal assistance service provided to an individual
24 with significant disabilities to aid in performing essential personal
25 tasks, such as bathing, communicating, cooking, dressing, eating,
26 homemaking, toileting, and transportation.
27
28 (5) Blind--An individual having not more than 20/200 visual acuity in the
29 better eye with correcting lenses or visual acuity greater than 20/200
30 but with a limitation in the field of vision such that the widest diameter
31 of the visual field subtends an angle no greater than 20 degrees.
32
33 (6) Center for Independent Living (CIL)--Has the meaning assigned by
34 §702 of the Act (29 USC §796a).
35
36 (7) Client Assistance Program (CAP)--A federally funded program under
37 34 CFR Part 370 that provides information, assistance, and advocacy
38 for individuals with disabilities who are seeking or receiving services
39 from programs funded under the Act. In Texas, the designated agency
40 is Disability Rights Texas (DRTx).
41
42 (8) Comparable services or benefits--Services and benefits that are
43 provided or paid for, in whole or part, by other federal, state, or local
44 public programs, or by health insurance, third-party payers, or other
45 private sources.
46

- 1 (9) Customer--An individual who is eligible for and receiving ILS-OIB
2 services under this chapter.
3
- 4 (10) Customer participation system--The system for determining and
5 collecting the financial contribution that a customer may be required to
6 pay for receiving ILS-OIB services.
7
- 8 (11) Customer representative--Any individual chosen by a customer,
9 including the customer's parent, guardian, other family member, or
10 advocate. If a court has appointed a guardian or representative, that
11 individual is the customer's representative.
12
- 13 (12) Federal Poverty Guidelines--The poverty guidelines updated
14 periodically in the *Federal Register* by the US Department of Health
15 and Human Services under the authority of 42 USC §9902(2), found at
16 <https://aspe.hhs.gov/poverty-guidelines>.
17
- 18 (13) Independent Living Plan (ILP)--A written plan in which the customer
19 and OIB staff have collaboratively identified the services that the
20 customer needs to achieve the goal of living independently.
21
- 22 (14) Low vision--A condition of having a visual acuity not more than 20/70
23 in the better eye with correcting lenses, or visual acuity greater than
24 20/70 but with a limitation in the field of vision such that the widest
25 diameter of the visual field subtends an angle no greater than 30
26 degrees, or having a combination of both.
27
- 28 (15) Significant disability--A significant physical, mental, cognitive, or
29 sensory impairment that substantially limits an individual's ability to
30 function independently in the family or community.
31
- 32 (16) Transition services--Services that:
33
- 34 (A) facilitate the transition of individuals with significant disabilities
35 from nursing homes and other institutions to home and
36 community-based residences, with the requisite supports and
37 services; and
38
- 39 (B) provide assistance to individuals with significant disabilities who
40 are at risk of entering institutions so that the individuals may
41 remain in the community.
42

43 **§853.2. Referral.**
44

- 45 (a) An individual may be referred for ILS-OIB services by a variety of
46 organizations, including, but not limited to:

- 1
2 (1) a physician's office;
3
4 (2) a community organization;
5
6 (3) the Center for Independent Living (CIL);
7
8 (4) a senior community organization; or
9
10 (5) family, customer representative, and friends.

11
12 (b) A referral shall include the name of the individual seeking services, the
13 address where the individual resides, and an e-mail address and telephone
14 number, if available.

15
16 (c) During the referral process, OIB staff shall verify the eligibility criteria,
17 determine the level of services needed by the customer, and provide minimal
18 services, which can include information and referral guide, bump dots for
19 kitchen appliances, and magnifiers. If minimal services are all that a customer
20 requires, the case can be closed as a referral only.

21
22 (d) For service delivery to begin, an individual shall submit a complete
23 application and document that all eligibility requirements are met.

24
25 **§853.3. Accessible Communication.**

26
27 (a) The Agency shall provide all members of the public with disabilities who are
28 seeking information or other services from the Agency access to and use of
29 electronic and information resources comparable to the access and use
30 provided to members of the public without disabilities, unless compliance
31 with this section imposes a significant difficulty or expense to the Agency
32 under Texas Government Code §2054.460.

33
34 (b) The Agency may use alternate methods or formats to provide timely access
35 by individuals with disabilities to Agency electronic and information
36 resources.

37
38 (c) The Agency shall ensure that ILS-OIB applicants and customers are given the
39 opportunity to request and receive communication from the Agency in an
40 alternate format or by alternate methods.

41
42 **§853.4. Application.**

43
44 An individual is considered to have submitted an application when the individual
45 or the individual's representative, as appropriate:
46

- 1 (1) has completed and signed--including entry of electronic PIN--the ILS-
2 OIB application form;
- 3
- 4 (2) has provided the information necessary to initiate an assessment to
5 determine eligibility and service delivery; and
- 6
- 7 (3) is available to complete the assessment process to determine eligibility.
- 8

9 **§853.5. Eligibility.**

- 10 (a) To be eligible for ILS-OIB, a customer must:
 - 11 (1) be age 55 or older;
 - 12
 - 13 (2) be blind or have low vision as defined in §853.1, relating to
14 Definitions;
 - 15
 - 16 (3) be an individual for whom independent living goals are feasible; and
 - 17
 - 18 (4) be present in Texas.
 - 19
- 20
- 21
- 22 (b) Eligibility for blindness or low vision is determined by OIB staff based on
23 the documented diagnosis of a licensed practitioner.
- 24
- 25 (c) Individuals shall establish eligibility through existing data and information,
26 including, but not limited to, medical records and information used by the
27 Social Security Administration. The information may be obtained from the
28 applicant, the applicant's family members, or the applicant's representative.
29 OIB staff may assist in locating or obtaining existing documentation.
- 30
- 31 (d) The Agency shall substantively evaluate the documentation and application
32 to determine whether eligibility requirements are met.
- 33
- 34 (e) OIB staff shall endeavor to make an eligibility determination within 60 days
35 from the time a completed and signed application for services has been
36 received. The eligibility determination is conditional on the applicant's
37 availability to complete the assessment process, as set forth in §853.4(3) of
38 this subchapter. When an applicant is unavailable to complete such
39 assessment process in a timely manner due to unforeseen circumstances,
40 which may include, but are not limited to, medical conditions or
41 hospitalizations, the 60-day period shall be abated until the applicant is
42 available to complete the necessary assessment process to determine
43 eligibility.
- 44

- 1 (f) Eligibility cannot be established unless and until all required elements under
2 subsection (a) of this section have been completed and documented,
3 including any assessment to establish eligibility.
4
- 5 (g) Eligibility requirements are applied without regard to an individual's age,
6 color, creed, gender, national origin, race, religion, or length of time present
7 in Texas.
8

9 **§853.6. Ineligibility Determination.**

- 10
- 11 (a) A determination of ineligibility shall be based only on a substantive
12 evaluation of an applicant's completed and signed application, including all
13 documentation required to establish eligibility under §853.5(a) of this
14 subchapter.
15
- 16 (b) Before making a determination of ineligibility, OIB staff shall provide the
17 applicant or the applicant's representative, as appropriate, an opportunity to
18 consult with OIB staff. OIB staff shall notify the applicant, or the applicant's
19 representative, as appropriate, of an ineligibility determination. Notice shall
20 be provided in accessible format and through accessible methods, as required
21 under Texas Government Code §2054.460. The notice shall include the
22 following:
23
- 24 (1) A brief statement of the ineligibility determination, with reference to
25 the requirements under this chapter and any deficiencies;
 - 26
 - 27 (2) The mailing date of the determination;
 - 28
 - 29 (3) An explanation of the individual's right to an appeal;
 - 30
 - 31 (4) The procedures for filing an appeal with the Agency, including
32 applicable time frames;
 - 33
 - 34 (5) The right to have a hearing representative, including legal counsel;
 - 35
 - 36 (6) How to contact the Texas CAP, which is DRTx; and
 - 37
 - 38 (7) The address or fax number to which the appeal must be sent.
39
- 40 (c) When appropriate, OIB staff may refer the applicant to other agencies and
41 facilities.
42

43 **SUBCHAPTER B. SERVICES**

44

45 **§853.10. Independent Living Plan.**
46

- 1 (a) Once an individual is determined eligible, the ILP is developed and agreed to
2 within 90 days from the date of notification of eligibility, unless an alternate
3 date is agreed to by the customer or the customer's representative, as
4 appropriate.
5
6 (b) OIB staff must jointly develop the ILP and all subsequent amendments in
7 writing, through consultation with the customer or the customer's
8 representative, as appropriate.
9
10 (c) A customer may waive receipt of the written plan by signing the Agency
11 Waiver of Independent Living Plan (DARS 5154).
12
13 (d) Through consultation, OIB staff and the customer, or the customer's
14 representative, as appropriate, determine how services shall be delivered and
15 document service delivery methods in the electronic record of the ILP, which
16 OIB staff must maintain.
17
18 (e) The Agency shall ensure that the customer or the customer's representative,
19 as appropriate, is advised of procedures and requirements affecting the
20 development and review of the ILP.
21
22 (f) To receive a copy of the ILP and its amendments in a medium other than
23 print, the customer must inform OIB staff of the preferred medium.
24
25 (g) OIB staff shall review the ILP at least annually with the customer or the
26 customer's representative, as appropriate, to assess the customer's progress in
27 meeting the objectives identified in the ILP.
28
29 (h) OIB staff shall incorporate any revisions to the ILP that are necessary to
30 reflect changes in the customer's goals, intermediate objectives, or needs.
31
32 (i) The customer must inform the Agency in a timely manner of changes that
33 will affect the provision of services, including, but not limited to, the
34 customer's unavailability to receive services.
35

36 **§853.11. Scope of Services.**
37

- 38 (a) All services provided under this section shall be subject to budget constraints
39 of the program.
40
41 (b) OIB staff shall provide each service in accordance with a customer's ILP.
42
43 (c) OIB staff may directly provide the following services under this chapter:
44
45 (1) Information and referral services;
46

- 1 (2) Independent living skills training;
- 2
- 3 (3) Peer counseling (including cross-disability peer counseling);
- 4
- 5 (4) Individual and systems advocacy;
- 6
- 7 (5) Orientation and mobility training;
- 8
- 9 (6) Diabetes education;
- 10
- 11 (7) Braille training; and
- 12
- 13 (8) Transition services.
- 14
- 15 (d) OIB staff may purchase goods or services with an approved provider as
- 16 identified and agreed upon with the customer in the ILP, including:
- 17
- 18 (1) counseling services, to include psychological and psychotherapeutic
- 19 services;
- 20
- 21 (2) orientation and mobility training;
- 22
- 23 (3) diabetes awareness training;
- 24
- 25 (4) rehabilitation technology (for example, a video magnifier); and
- 26
- 27 (5) related visual aid tools, such as magnifiers and low vision eyeglasses.
- 28
- 29 (e) OIB staff may refer customers to other services to meet their needs. Such
- 30 other services may include, but are not limited to:
- 31
- 32 (1) CIL services;
- 33
- 34 (2) housing services, including supportive living;
- 35
- 36 (3) accessible transportation services;
- 37
- 38 (4) medical services;
- 39
- 40 (5) personal assistance services, including attendant care and the training
- 41 of individuals to provide such services;
- 42
- 43 (6) education and training necessary for living in a community and
- 44 participating in community activities; and
- 45
- 46 (7) social and recreational services.

1
2 **SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION**

3
4 **§853.20. Individuals Who Receive Social Security Income or Social Security**
5 **Disability Insurance.**

- 6
7 (a) Customers who are recipients of either Social Security Income (SSI) or
8 Social Security Disability Insurance (SSDI) are not required to participate in
9 the cost of services.
10
11 (b) OIB staff shall ensure that each customer or the customer's representative, as
12 appropriate, is informed of the services that require customer participation in
13 the cost of services and the services that do not require customer
14 participation.

15
16 **§853.21. Customer Participation in the Cost of Services.**

- 17
18 (a) The following independent living services, as defined in §853.11, relating to
19 Scope of Services, are subject to customer participation in cost of service:
20
21 (1) Transportation, excluding transportation for diagnostic services; and
22
23 (2) Adaptive aids or appliances that cost more than \$50.
24
25 (b) OIB staff shall administer the customer participation system in accordance
26 with the rules in this chapter, the ILS-OIB policy manual, and 34 CFR
27 §367.67(b)(1).
28
29 (c) OIB staff shall provide those independent living services defined as not
30 requiring customer participation in cost of services in §853.11 of this chapter
31 at no cost to the customer.
32
33 (d) OIB staff shall determine the customer's adjusted gross income and the
34 percentage of the Federal Poverty Guidelines at [https://aspe.hhs.gov/poverty-](https://aspe.hhs.gov/poverty-guidelines)
35 [guidelines](https://aspe.hhs.gov/poverty-guidelines) for that income, based on documentation provided by the
36 customer.
37
38 (e) OIB staff is required to apply the Federal Poverty Guidelines at
39 <https://aspe.hhs.gov/poverty-guidelines> to determine customer participation.
40
41 (f) The customer or customer's representative shall sign a customer participation
42 agreement acknowledging the amount of the customer's fee for services and
43 providing written agreement that:
44
45 (1) the information provided by the customer or the customer's
46 representative about the customer's household size, annual gross

1 income, allowable deductions, and comparable services or benefits is
2 true and accurate; or

3
4 (2) the customer or the customer's representative chooses not to provide
5 information about the customer's household size, annual gross income,
6 allowable deductions, and comparable services or benefits.

7
8 (g) If the customer or the customer's representative, as appropriate, chooses not
9 to provide information on the customer's household size, annual gross
10 income, allowable deductions, and comparable services or benefits, the
11 customer shall pay the entire cost of services.

12
13 (h) The customer shall report to OIB staff as soon as possible all changes to
14 household size, annual gross income, allowable deductions, and comparable
15 services or benefits and sign a new customer participation agreement.

16
17 (i) When the customer signs a new participation agreement, the new amount of
18 the customer's fee for service takes effect the beginning of the following
19 month. The new amount shall not be applied retroactively.

20
21 (j) OIB staff shall develop a process to reconsider and adjust the customer's fee
22 for services based on circumstances that are both extraordinary and
23 documented. This may include assessing the customer's ability to pay the
24 customer's participation amount. Extraordinary circumstances include:

25
26 (1) an increase or decrease in income;

27
28 (2) unexpected medical expenses;

29
30 (3) unanticipated disability-related expenses;

31
32 (4) a change in family size;

33
34 (5) catastrophic loss, such as fire, flood, or tornado;

35
36 (6) short-term financial hardship, such as a major repair to the customer's
37 home or personally owned vehicle; or

38
39 (7) other extenuating circumstances for which the customer makes a
40 request and provides supporting documentation.

41
42 (k) The customer's calculated fee for services remains in effect during the
43 reconsideration and adjustment process.

44
45 (l) OIB staff shall:
46

1 (1) use program income that is received from the customer participation
2 system only to provide services outlined in §853.11; and

3
4 (2) report fees collected as program income.

5
6 (m) The Agency may not use program income received from the customer
7 participation system to supplant any other fund sources.

8
9 (n) The Agency may not pay any portion of the customer's participation fee.

10
11 (o) The customer's participation agreement and all financial information
12 collected by OIB staff are subject to subpoena.

13
14 **§853.22. Availability of Comparable Services and Benefits.**

15
16 (a) The Agency shall determine whether comparable services or benefits are
17 available to the customer under any other program and if comparable services
18 or benefits are available to the customer under any other program, the
19 customer shall use those benefits first. This includes services that are
20 included under the customer's medical and dental insurance, including
21 government insurance.

22
23 (b) The Agency shall not make this determination in cases in which comparable
24 services or benefits exist under any other program, but are not available to the
25 customer at the time needed, and:

26
27 (1) determining the availability of comparable services and benefits under
28 any other program would delay the provision of services to customers
29 who could be at medical risk, based on medical evidence provided by
30 an appropriate, qualified medical professional; or

31
32 (2) the determination would interrupt or delay progress toward achieving
33 the goals in the ILP.

34
35 **SUBCHAPTER D. CASE DOCUMENTATION**

36
37 **§853.30. Case Closure.**

38
39 (a) The Agency closes a case when the customer's ILP has been completed,
40 typically within 18 months of plan development. The case will be closed
41 sooner without completion of services if:

42
43 (1) the customer does not meet eligibility criteria;

44

- 1 (2) the customer is unavailable, for an extended period of time, to complete
2 an assessment of independent living needs and staff has made repeated
3 efforts to contact and encourage the applicant to participate;
4
 - 5 (3) the customer has refused services or further services;
6
 - 7 (4) the customer is no longer present in Texas;
8
 - 9 (5) the customer's whereabouts are unknown;
10
 - 11 (6) the customer's medical condition is rapidly progressive or terminal;
12 (7) the customer has refused to cooperate with the Agency; or
13
 - 14 (8) the customer's case has been transferred to another agency.
15
- 16 (b) A customer or the customer's representative, as appropriate, shall be notified
17 of any case closure except when the customer's whereabouts are unknown.
18
 - 19 (c) Post-closure services shall not normally exceed six months.
20

21 **SUBCHAPTER E. CUSTOMERS' RIGHTS**

22 **§853.40. Rights of Customers.**

- 23
- 24
- 25 (a) In accordance with applicable legal provisions, the Agency does not, directly
26 or through contractual or other arrangements, exclude, deny benefits to, limit
27 the participation of, or otherwise discriminate against any individual on the
28 basis of age, color, disability, national origin, political belief, race, religion,
29 sex, or sexual orientation. For the purposes of receiving ILS-OIB services,
30 the customer must be blind or have a low vision; however, that requirement is
31 not considered discrimination against any individual on the basis of
32 disability.
33
- 34 (b) OIB staff shall ensure the customer or the customer's representative, as
35 appropriate, is notified in an accessible format about the rights included in
36 subsection (a) of this section, and §853.21, relating to Customer Participation
37 in the Cost of Services, when:
38
- 39 (1) the customer applies for services;
40
- 41 (2) OIB staff determines that a customer is ineligible for services; and
42
- 43 (3) OIB staff intends to terminate services.
44
- 45 (c) Filing a complaint with DRTx:
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- (1) A customer has the right to appeal a determination to the state’s CAP. The CAP in Texas is implemented by DRTx.
- (2) DRTx advocates are not employees of the Agency. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.
- (3) A customer who is enrolled in ILS-OIB, or the customer's representative, may file a complaint with DRTx alleging that a requirement of ILS-OIB was violated. The complaint does not need to be filed with ILS-OIB.

§853.41. Right to Appeal.

A customer has the right to appeal, as set forth in Chapter 850 of this title, relating to Vocational Rehabilitation Services Administrative Rules and Procedures.