

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

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **APRIL 17, 2018**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

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The Texas Workforce Commission (TWC) proposes new Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind (ILS-OIB), comprising the following subchapters:

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

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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

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

Additionally, the proposed amendments are necessary to comply with Texas Labor Code §352.101, which required TWC to integrate the two separate vocational rehabilitation

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

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

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

TWC proposes new Subchapter A, Independent Living Services for Older Individuals Who Are Blind, as follows:

§853.1. Definitions

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

§853.2. Referral

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

§853.3. Accessible Communication

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

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

§853.4. Application

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

§853.5. Eligibility

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

§853.6. Ineligibility Determination

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

SUBCHAPTER B. SERVICES

TWC proposes new Subchapter B, Services, as follows:

§853.10. Independent Living Plan

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

§853.11. Scope of Services

New §853.11 replaces repealed §854.134 and updates its provisions to provide a listing of the services available to ILS-OIB customers, subject to budget constraints of the program. The list includes services provided directly by TWC, as well as those services

for which the customer is referred to other entities. Services are based on 29 USC §705(17) and 34 CFR 367.3.

SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

TWC proposes new Subchapter C, Customer Financial Participation, as follows:

§853.20. Individuals Who Receive Social Security Income or Social Security Disability Insurance

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

§853.21. Customer Participation in the Cost of Services

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

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

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

§853.22. Availability of Comparable Services and Benefits

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

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

--comparable services or benefits might exist under another program, but are not available to the customer at the time needed; and
--determining the availability of the comparable services and benefits under another program would delay the provision of services to customers who could be at medical risk;
or
--the determination would interrupt or delay progress toward achieving the customer's ILP goals.

SUBCHAPTER D. CASE DOCUMENTATION

TWC proposes new Subchapter D, Case Documentation, as follows:

§853.30. Case Closure

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

SUBCHAPTER E. CUSTOMER'S RIGHTS

TWC proposes new Subchapter E, Customer's Rights, as follows:

§853.40. Rights of Customers

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

§853.41. Right to Appeal

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

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions in to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, Texas Government Code §2001.0045, does not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's three-member Commission to adopt rules necessary to integrate the VR programs, including recommending adopting rules to implement the integration. Therefore, the exception identified in §2001.0045(c)(9) also applies.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect:

- the proposed rules will not create or eliminate a government program;
- implementation of the proposed rules will not require the creation or elimination of employee positions;
- implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to TWC;
- the proposed rules will not require an increase or decrease in fees paid to TWC;
- the proposed rules will not create a new regulation;
- the proposed rules will not expand, limit, or eliminate an existing regulation;
- the proposed rules will not change the number of individuals subject to the rules; and
- the proposed rules will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to comply with statutory requirements, unify and clarify rule language, update terminology, and improve consistency within the ILS-OIB program.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these proposed rules to the Boards for consideration and review on January 16, 2018. TWC also conducted a conference call with Board executive directors and Board staff on January 19, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

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

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

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

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

§853.1. Definitions.

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

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

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

§853.2. Referral.

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

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

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

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

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

§853.3. Accessible Communication.

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

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

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

§853.4. Application.

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

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

§853.5. Eligibility.

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

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

§853.6. Ineligibility Determination.

- (a) A determination of ineligibility shall be based only on a substantive evaluation of an applicant's completed and signed application, including all documentation required to establish eligibility under §853.5(a) of this subchapter.
- (b) Before making a determination of ineligibility, OIB staff shall provide the applicant or the applicant's representative, as appropriate, an opportunity to consult with OIB staff. OIB staff shall notify the applicant, or the applicant's representative, as appropriate, of an ineligibility determination. Notice shall be provided in accessible format and through accessible methods, as required under Texas Government Code §2054.460. The notice shall include the following:
 - (1) A brief statement of the ineligibility determination, with reference to the requirements under this chapter and any deficiencies;
 - (2) The mailing date of the determination;
 - (3) An explanation of the individual's right to an appeal;
 - (4) The procedures for filing an appeal with the Agency, including applicable time frames;
 - (5) The right to have a hearing representative, including legal counsel;
 - (6) How to contact the Texas CAP, which is DRTx; and
 - (7) The address or fax number to which the appeal must be sent.
- (c) When appropriate, OIB staff may refer the applicant to other agencies and facilities.

SUBCHAPTER B. SERVICES

§853.10. Independent Living Plan.

- (a) Once an individual is determined eligible, the ILP is developed and agreed to within 90 days from the date of notification of eligibility, unless an alternate date is agreed to by the customer or the customer's representative, as appropriate.
- (b) OIB staff must jointly develop the ILP and all subsequent amendments in writing, through consultation with the customer or the customer's representative, as appropriate.
- (c) A customer may waive receipt of the written plan by signing the Agency Waiver of Independent Living Plan (DARS 5154).
- (d) Through consultation, OIB staff and the customer, or the customer's representative, as appropriate, determine how services shall be delivered and document service delivery methods in the electronic record of the ILP, which OIB staff must maintain.
- (e) The Agency shall ensure that the customer or the customer's representative, as appropriate, is advised of procedures and requirements affecting the development and review of the ILP.
- (f) To receive a copy of the ILP and its amendments in a medium other than print, the customer must inform OIB staff of the preferred medium.
- (g) OIB staff shall review the ILP at least annually with the customer or the customer's representative, as appropriate, to assess the customer's progress in meeting the objectives identified in the ILP.
- (h) OIB staff shall incorporate any revisions to the ILP that are necessary to reflect changes in the customer's goals, intermediate objectives, or needs.
- (i) The customer must inform the Agency in a timely manner of changes that will affect the provision of services, including, but not limited to, the customer's unavailability to receive services.

§853.11. Scope of Services.

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

- (2) Independent living skills training;
 - (3) Peer counseling (including cross-disability peer counseling);
 - (4) Individual and systems advocacy;
 - (5) Orientation and mobility training;
 - (6) Diabetes education;
 - (7) Braille training; and
 - (8) Transition services.
- (d) OIB staff may purchase goods or services with an approved provider as identified and agreed upon with the customer in the ILP, including:
- (1) counseling services, to include psychological and psychotherapeutic services;
 - (2) orientation and mobility training;
 - (3) diabetes awareness training;
 - (4) rehabilitation technology (for example, a video magnifier); and
 - (5) related visual aid tools, such as magnifiers and low vision eyeglasses.
- (e) OIB staff may refer customers to other services to meet their needs. Such other services may include, but are not limited to:
- (1) CIL services;
 - (2) housing services, including supportive living;
 - (3) accessible transportation services;
 - (4) medical services;
 - (5) personal assistance services, including attendant care and the training of individuals to provide such services;
 - (6) education and training necessary for living in a community and participating in community activities; and
 - (7) social and recreational services.

SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

§853.20. Individuals Who Receive Social Security Income or Social Security Disability Insurance.

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

§853.21. Customer Participation in the Cost of Services.

- (a) The following independent living services, as defined in §853.11, relating to Scope of Services, are subject to customer participation in cost of service:
 - (1) Transportation, excluding transportation for diagnostic services; and
 - (2) Adaptive aids or appliances that cost more than \$50.
- (b) OIB staff shall administer the customer participation system in accordance with the rules in this chapter, the ILS-OIB policy manual, and 34 CFR §367.67(b)(1).
- (c) OIB staff shall provide those independent living services defined as not requiring customer participation in cost of services in §853.11 of this chapter at no cost to the customer.
- (d) OIB staff shall determine the customer's adjusted gross income and the percentage of the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines> for that income, based on documentation provided by the customer.
- (e) OIB staff is required to apply the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines> to determine customer participation.
- (f) The customer or customer's representative shall sign a customer participation agreement acknowledging the amount of the customer's fee for services and providing written agreement that:
 - (1) the information provided by the customer or the customer's representative about the customer's household size, annual gross

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

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

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

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

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

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

(1) an increase or decrease in income;

(2) unexpected medical expenses;

(3) unanticipated disability-related expenses;

(4) a change in family size;

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

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

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

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

(l) OIB staff shall:

- (1) use program income that is received from the customer participation system only to provide services outlined in §853.11; and
- (2) report fees collected as program income.
- (m) The Agency may not use program income received from the customer participation system to supplant any other fund sources.
- (n) The Agency may not pay any portion of the customer's participation fee.
- (o) The customer's participation agreement and all financial information collected by OIB staff are subject to subpoena.

§853.22. Availability of Comparable Services and Benefits.

- (a) The Agency shall determine whether comparable services or benefits are available to the customer under any other program and if comparable services or benefits are available to the customer under any other program, the customer shall use those benefits first. This includes services that are included under the customer's medical and dental insurance, including government insurance.
- (b) The Agency shall not make this determination in cases in which comparable services or benefits exist under any other program, but are not available to the customer at the time needed, and:
 - (1) determining the availability of comparable services and benefits under any other program would delay the provision of services to customers who could be at medical risk, based on medical evidence provided by an appropriate, qualified medical professional; or
 - (2) the determination would interrupt or delay progress toward achieving the goals in the ILP.

SUBCHAPTER D. CASE DOCUMENTATION

§853.30. Case Closure.

- (a) The Agency closes a case when the customer's ILP has been completed, typically within 18 months of plan development. The case will be closed sooner without completion of services if:
 - (1) the customer does not meet eligibility criteria;
 - (2) the customer is unavailable, for an extended period of time, to complete an assessment of independent living needs and staff has made repeated efforts to contact and encourage the applicant to participate;

- (3) the customer has refused services or further services;
 - (4) the customer is no longer present in Texas;
 - (5) the customer's whereabouts are unknown;
 - (6) the customer's medical condition is rapidly progressive or terminal;
 - (7) the customer has refused to cooperate with the Agency; or
 - (8) the customer's case has been transferred to another agency.
- (b) A customer or the customer's representative, as appropriate, shall be notified of any case closure except when the customer's whereabouts are unknown.
- (c) Post-closure services shall not normally exceed six months.

SUBCHAPTER E. CUSTOMERS' RIGHTS

§853.40. Rights of Customers.

- (a) In accordance with applicable legal provisions, the Agency does not, directly or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any individual on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For the purposes of receiving ILS-OIB services, the customer must be blind or have a low vision; however, that requirement is not considered discrimination against any individual on the basis of disability.
- (b) OIB staff shall ensure the customer or the customer's representative, as appropriate, is notified in an accessible format about the rights included in subsection (a) of this section, and §853.21, relating to Customer Participation in the Cost of Services, when:
- (1) the customer applies for services;
 - (2) OIB staff determines that a customer is ineligible for services; and
 - (3) OIB staff intends to terminate services.
- (c) Filing a complaint with DRTx:
- (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.