

CHAPTER 854. DIVISION FOR BLIND SERVICES

PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO 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 the repeal of the following sections of Chapter 854, relating to the Division for Blind Services:

Subchapter A. Criss Cole Rehabilitation Center, §§854.1 - 854.7, 854.130 - 854.134
Subchapter D. Independent Living Services for Older Individuals Who Are Blind, §§854.110 - 854.112, 854.120, 854.130 - 854.134, 854.140 - 854.142, 854.150, 854.151, 854.160, 854.170

PART I. PURPOSE, BACKGROUND, AND AUTHORITY
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PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 854 Subchapter A, Criss Cole Rehabilitation Center rule change is to comply with Texas Labor Code §352.101. Section 352.101 required TWC to integrate the two 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 were integrated into a single VR program. The rules to support this integration were effective November 6, 2017. TWC proposes that a new subchapter in Chapter 856 contain all rules for the Criss Cole Rehabilitation Center (CCRC) program. Therefore, TWC proposes the repeal of Chapter 854, Subchapter A and Subchapter D.

In August 2016, the Texas Health and Human Services Commission promulgated new rules for the Independent Living Services for Older Individuals Who Are Blind (ILS-OIB) program. As transferred to TWC, these rules, found at Subchapter D of current TWC Chapter 854 rules, supported plans for this program to be outsourced. However, as TWC provides ILS-OIB services as in-house services, the rules must be revised to reflect this service-delivery model.

Currently, program rules for ILS-OIB are located in Chapter 854, Subchapter D. In a separate but concurrent rulemaking, TWC proposes adopting new Chapter 853, to contain all rules for the ILS-OIB program.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. CRISS COLE REHABILITATION CENTER

TWC proposes the repeal of Subchapter A, Criss Cole Rehabilitation Center, in its entirety:

§854.1. Purpose

Section 854.1 is repealed. This section is no longer needed in this chapter.

§854.2. Legal Authority

Section 854.2 is repealed. This section is no longer needed in this chapter.

§854.3. Definitions

Section 854.3 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking proposal that groups common rules that address TWC's VR program.

§854.4. Eligibility

Section 854.4 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking proposal that groups common rules that address TWC's VR program.

§854.5. Services

Section 854.5 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking proposal that groups common rules that address TWC's VR program.

§854.6. Consumer Participation and Comparable Services and Benefits

Section 854.6 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking proposal that groups common rules that address TWC's VR program.

§854.7. Payment of Shift Differentials

Section 854.7 is repealed. The information in this section is being incorporated into new Chapter 856, Subchapter G, in a separate but concurrent rulemaking proposal that groups common rules that address TWC's VR program.

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

TWC proposes the repeal of Subchapter D, Independent Living Services for Older Individuals Who Are Blind, in its entirety:

SUBCHAPTER D. DIVISION 1: GENERAL RULES

§854.110. Purpose

Section 854.110 is repealed. This section is no longer needed in this chapter.

§854.111. Legal Authority

Section 854.111 is repealed. This section is no longer needed in this chapter.

§854.112. Definitions

Section 854.112 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

SUBCHAPTER D. DIVISION 2: ALLOCATION OF FUNDS

§854.120. Allocation of Funds

Section 854.120 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

SUBCHAPTER D. DIVISION 3: INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

§854.130. Purpose

Section 854.130 is repealed. This section is no longer needed in this chapter.

§854.131. Eligibility

Section 854.131 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

§854.132. Independent Living Plan

Section 854.132 is repealed. The information in this section has been incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

§854.133. Waiting List

Section 854.133 is repealed. This section is no longer needed in this chapter.

§854.134. Scope of Services

Section 854.134 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

SUBCHAPTER D. DIVISION 4: CONSUMER PARTICIPATION

§854.140. Consumer Participation System

Section 854.140 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

§854.141. Fee Schedule Amount

Section 854.141 is repealed. This section is no longer needed in this chapter.

§854.142. Insurance Payments

Section 854.142 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

SUBCHAPTER D. DIVISION 5: CONSUMER RIGHTS

§854.150. Rights of Consumers

Section 854.150 is repealed. The information in this section is being incorporated into new Chapter 853 in a separate but concurrent rulemaking proposal that consolidates TWC's ILS-OIB program rules into a new chapter.

§854.151. Complaint Process

Section 854.151 is repealed. This section is no longer needed in this chapter.

SUBCHAPTER D. DIVISION 6: TECHNICAL ASSISTANCE AND TRAINING

§854.160. Administering Agency's Role in Providing Technical Assistance

Section 854.160 is repealed. This section is no longer needed in this chapter.

SUBCHAPTER D. DIVISION 7: REFERRALS

§854.170. Expectations of Administering Agency's Employees

Section 854.170 is repealed. This section is no longer needed in this chapter.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the repeals 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 the repeal.

There are no estimated cost reductions to the state and to local governments as a result of the repeal.

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

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

There are no anticipated economic costs to individuals as a result of the repeal.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of the repeal.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, codified at Texas Government Code §2001.0045, does not apply to this rulemaking.

Government Growth Impact Statement

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

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

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed repeals will not have an adverse economic impact on small businesses or rural communities, as the proposed repeal places no requirements on small businesses or rural communities.

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 repeals.

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

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 the proposal of these repeals for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding the proposed repeal to the Boards for consideration and

review on January 1, 2018. TWC also conducted a conference call with Board executive directors and Board staff on July 19, 2018, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to propose the repeal.

Comments on the proposed repeal 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 repeal is 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

Chapter 854. DIVISION FOR BLIND SERVICES

~~SUBCHAPTER A. CRISS COLE REHABILITATION CENTER~~

~~§854.1. Purpose.~~

~~The Criss Cole Rehabilitation Center (CCRC) is a comprehensive rehabilitation facility operated by the Division for Blind Services (DBS), Department of Assistive and Rehabilitative Services, in Austin, Texas. CCRC provides evaluation, training, and related services in a residential and community setting to help consumers who are blind accomplish their employment and independent living goals.~~

~~§854.2. Legal Authority.~~

~~The following statutes and regulations authorize or require the rules in this subchapter:~~

- ~~(1) Texas Human Resources Code, §91.021;~~
- ~~(2) Texas Human Resources Code, §117;~~
- ~~(3) The Rehabilitation Act of 1973 as amended (29 United States Code §§701 et seq); and~~
- ~~(4) implementing federal regulations (34 Code of Federal Regulations, Part 361).~~

~~§854.3. Definitions.~~

~~The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Blind (person who is) A person whose visual acuity with best correction is 20/200 or less in the better eye; or a person 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, which means a visual field of no greater than 20 degrees in the better eye.~~
- ~~(2) Consumer An individual with a disability who has applied for, or who is receiving vocational rehabilitation services.~~

~~§854.4. Eligibility.~~

- ~~(a) A person residing in Texas must be a current vocational rehabilitation or independent living consumer and must be referred to CCRC by one of DBS' vocational rehabilitation counselors or independent living caseworkers. A person residing outside Texas who is receiving rehabilitation services from an agency in another state is considered for admission and training on a space available basis,~~

subject to an agreement between the state agency and DBS on payment of cost of services provided to the person.

- (b) ~~All consumers who are referred to CCRC must be blind. Priority is for consumers who are receiving services from the DBS Vocational Rehabilitation Program.~~

~~§854.5. Services.~~

~~CCRC provides services such as functional evaluations, and individualized and small-group training in communication, home and personal management, orientation and mobility, braille, low vision, health management, nutrition, physical conditioning, social skills, technology awareness, and career guidance. This list should not be interpreted as comprehensive; ancillary services may also be available. Services are provided in accordance with DBS' Vocational Rehabilitation Program as listed on the consumer's individualized plan for employment or independent living plan.~~

~~§854.6. Consumer Participation and Comparable Services and Benefits.~~

~~For information about consumer participation and comparable benefits, refer to §106.507 of this chapter (relating to Scope of Consumer Participation) and §106.607 of this chapter (relating to Comparable Services and Benefits).~~

~~§854.7. Payment of Shift Differentials.~~

- (a) ~~The assistant commissioner is authorized to pay a shift differential to eligible employees in the Vocational Rehabilitation Program. The shift differential is paid in addition to the employee's regular base pay, exclusive of longevity and benefit replacement pay.~~
- (b) ~~The assistant commissioner is authorized to determine the DBS positions that are eligible to receive shift differential payments. The rate of payment is a percentage of the employee's monthly regular base pay, not to exceed the maximum allowed by state law, in relation to the number of hours the employee regularly works outside the work hours of Monday through Friday, 8:00 a.m. to 5:00 p.m.~~
- (c) ~~This section does not apply to employees whose work hours have been adjusted according to DARS policies concerning staggered work hours.~~

~~SUBCHAPTER D. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND~~

~~SUBCHAPTER D. DIVISION 1: GENERAL RULES~~

~~§854.110. Purpose.~~

~~This program provides services that promote to the fullest extent the integration and inclusion of older individuals who are blind into society.~~

~~§854.111. Legal Authority.~~

~~(a) The legal authority for the program is published in the following federal regulations and state statutes:~~

~~(1) 34 Code of Federal Regulations, Parts 364, 365, 366, and 367;~~

~~(2) 29 U.S.C. §§711(e) and 796j, 796l; and~~

~~(3) Texas Human Resources Code, §117.079 and §117.080.~~

~~(b) In case of any conflict, federal regulations prevail.~~

~~§854.112. Definitions.~~

~~The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.~~

~~(1) Ability to pay—The determination that the consumer is able to contribute financially toward the cost of independent living services for older individuals who are blind.~~

~~(2) Accessible format—An alternative way of providing to people with disabilities the same information, functionality, and services provided to people without disabilities. Examples of accessible formats include braille, ASCII text, large print, American Sign Language, and recorded audio.~~

~~(3) Act—The Rehabilitation Act of 1973, as amended.~~

~~(4) Adjusted income—The dollar amount that is equal to a household's annual gross income, minus allowable deductions.~~

~~(5) Allotment—Funds distributed to a service provider by DARS to provider services under this subchapter.~~

~~(6) Allowable deductions—Certain unreimbursed household expenses that are subtracted from a household's annual gross income to calculate the adjusted income.~~

~~(7) Attendant care—A personal assistance service provided to an individual with significant disabilities perform essential personal tasks, such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.~~

- ~~(8) Blind—A condition of having no more than 20/200 visual acuity in the better eye with correcting lenses or having visual acuity greater than 20/200 but with a field of vision in which the widest diameter subtends an angle no greater than 20 degrees.~~
- ~~(9) Center for Independent Living (CIL)—A private nonprofit agency for individuals with significant disabilities (regardless of age or income) that is not residential, is consumer controlled, is community based, takes a cross-disability approach, and:~~
- ~~(A) is designed and operated within a local community by individuals with disabilities; and~~
- ~~(B) provides an array of independent living services, including, at a minimum, independent living core services as they are defined in 29 U.S.C. §705(17).~~
- ~~(10) Client Assistance Program (CAP)—A federally funded program that provides information, assistance, and advocacy for people with disabilities who are seeking or receiving services from programs funded under the Act. The program is implemented by Disability Rights Texas (DRTx), a legal services organization whose mission is to protect the human, service, and legal rights of persons with disabilities in Texas.~~
- ~~(11) 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; by health insurance, third party payers, or other private sources; or by the employee benefits that are available to the consumer and are commensurate in quality and nature to the services that the consumer would otherwise receive from service providers.~~
- ~~(12) Consumer—An individual who has applied for or is receiving the independent living services for older individuals who are blind that are referred to under this subchapter.~~
- ~~(13) Consumer participation—The financial contribution that a consumer may be required to pay for receiving independent living services for older individuals who are blind.~~
- ~~(14) Consumer participation system—The system for determining and collecting the financial contribution that a consumer may be required to pay for receiving independent living services for older individuals who are blind.~~
- ~~(15) Consumer representative—Any person chosen by a consumer, including the consumer's parent, guardian, other family member, or advocate. If a court has~~

~~appointed a guardian or representative, that person is the consumer's representative.~~

- ~~(16) DARS—The Department of Assistive and Rehabilitative Services~~
- ~~(17) Federal poverty level guidelines—The poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC §9902(2).~~
- ~~(18) Fee—A percentage of the full cost for a purchased service that a consumer pays. The percentage is based on the DARS fee schedule and the fee does not exceed the maximum amount prescribed.~~
- ~~(19) Independent living plan—A written plan in which the consumer and service provider have collaboratively identified the services for older individuals who are blind that are needed to achieve the consumer's goal of living independently.~~
- ~~(20) Nonprofit—An agency, organization, or institution that is owned and operated by one or more corporations or associations whose net earnings do not and cannot lawfully benefit a private shareholder or entity.~~
- ~~(21) Older individual who is blind—An individual age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain but for whom independent living goals are feasible.~~
- ~~(22) Private—An agency, organization, or institution that is not under federal or public supervision or control.~~
- ~~(23) Service provider—A center for independent living, nonprofit organization, organization, or other person contracted or subcontracted to provide independent living services for older individuals who are blind.~~
- ~~(24) Severe visual impairment—A condition of having a visual acuity with best correction of 20/70 or less in the better eye, a visual field of 30 degrees or less in the better eye, or having a combination of both.~~
- ~~(25) Significant disability—A severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community.~~
- ~~(26) Sliding fee scale—The fee scale DARS uses to determine the maximum financial contribution that a consumer may be required to pay for receiving independent living services for older individuals who are blind. The scale is based on the federal poverty level guidelines.~~

~~(27) 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.~~

~~(28) Waived independent living plan—A written plan in which the service provider identifies on the behalf of the consumer the services that are needed to achieve the consumer's goal of living independently. The service provider writes the plan because the consumer has signed a waiver giving up the consumer's right to participate in the development of such a written plan.~~

SUBCHAPTER D. DIVISION 2: ALLOCATION OF FUNDS

§854.120. Allocation of Funds.

~~(a) DARS allocates to each service provider the funds needed to carry out the rules in this subchapter. DARS may consider the following when determining the amount allotted to each service provider:~~

~~(1) service area;~~

~~(2) population of the area served; and~~

~~(3) history of service delivery.~~

~~(b) The funds are administered by the designated service provider in accordance with the rules in this subchapter.~~

~~(c) When DARS determines that a service provider will not spend all of the funds allotted for a fiscal year to carry out the rules in this subchapter, DARS may allot the projected unused portion to other service providers to provide the covered services in this subchapter. The extra allotment is considered an increase in the other service providers' allotments for that fiscal year.~~

~~(d) The service provider ensures comparable services or benefits are exhausted before using funds allocated under this subchapter.~~

SUBCHAPTER D. DIVISION 3: INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

§854.130. Purpose.

~~This division provides information on independent living services for older individuals who are blind.~~

~~§854.131. Eligibility.~~

- ~~(a) To be eligible for independent living services for older individuals who are blind, a consumer must:
 - ~~(1) be 55 years old or older;~~
 - ~~(2) be blind as defined in §106.905(8) of this subchapter (relating to Definitions) or have a severe visual impairment as defined in §106.905(24) of this subchapter that makes competitive employment extremely difficult but for whom independent living goals are feasible; and~~
 - ~~(3) be present in Texas.~~~~
- ~~(b) Eligibility is determined by the service provider, based on the documented diagnosis of a licensed practitioner.~~
- ~~(c) Under Texas Government Code §531.02002, §531.02014, and Texas Labor Code §351.002, consumers who are determined to be eligible for independent living services for older individuals who are blind on or before August 31, 2016, remain eligible on September 1, 2016, and are considered grandfathered under the former DARS independent living program and do not need to reapply for independent living services for older individuals who are blind to the respective receiving agency on September 1, 2016.~~
- ~~(d) Eligibility requirements are applied without regard to a person's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.~~
- ~~(e) Once a consumer is determined to be eligible for services, the service provider:
 - ~~(1) notifies the consumer or the consumer's representative in writing about the consumer's fee for service, as described in §106.1201 of this subchapter (relating to Consumer Participation System); and~~
 - ~~(2) verifies the benefits of all consumers who may be covered for independent living services for older individuals who are blind by comparable services or benefits, as provided under this subchapter, and maintains all related documentation.~~~~
- ~~(f) If a service provider determines that a consumer is not eligible based on the criteria explained in this section, the service provider documents the determination of~~

~~ineligibility and provides DARS with a copy that is signed and dated by the service provider's executive director or designee.~~

- ~~(1) The service provider may determine a consumer to be ineligible for independent living services for older individuals who are blind only after consultation with the consumer or after providing a clear opportunity for this consultation.~~
- ~~(2) The service provider notifies the consumer in writing of the action taken and informs the consumer about the consumer's rights and the means by which the consumer may appeal the action taken or file a complaint.~~
- ~~(3) The service provider refers the consumer to other agencies and facilities, if appropriate, including referring the consumer to the State's vocational rehabilitation program.~~
- ~~(4) If a service provider determines that a consumer is ineligible for independent living services for older individuals who are blind, the service provider reviews the consumer's status again within 12 months of the determination and whenever the service provider determines that the consumer's status has materially changed.~~
- ~~(5) A review of an ineligibility determination need not be conducted if the consumer has refused one, the consumer is no longer present in Texas, or the consumer's whereabouts are unknown.~~

~~§854.132. Independent Living Plan.~~

~~(a) General.~~

- ~~(1) Unless the consumer who will receive independent living services for older individuals who are blind under this subchapter signs a waiver in accordance with paragraph (2) of this subsection, the service provider works with the consumer to develop and periodically review an independent living plan in accordance with this section.~~
- ~~(2) If the consumer knowingly and voluntarily signs a waiver stating that the consumer's participation in developing an independent living plan is unnecessary, the service provider develops a waived independent living plan.~~
- ~~(3) The service provider provides each independent living service in accordance with the independent living plan or waived independent living plan.~~

~~(b) Initiation and development of an independent living plan.~~

~~(1) A consumer's independent living plan or waived independent living plan is created after the consumer's eligibility is documented according to §106.1105 of this division (relating to Eligibility). The plan explains the goals or objectives established and the services to be provided. It indicates the anticipated duration of the service plan and the duration of each component service.~~

~~(2) Subject to subsection (a)(2) of this section, the independent living plan is developed by the service provider and the consumer or the consumer's representative.~~

~~(3) A copy of the independent living plan and any amendments must be provided in an accessible format to the consumer or the consumer's representative.~~

~~(c) Review.~~

~~(1) The independent living plan or waived independent living plan is reviewed as often as necessary but at least annually to determine whether to continue, modify, or discontinue services or refer the consumer to a vocational rehabilitation program or other assistance program.~~

~~(2) The consumer reviews the independent living plan and, if necessary, revises it and agrees by signature to its terms.~~

~~(d) Coordinating services. The independent living plan or waived independent living plan must be coordinated, to the extent possible, with any of the following programs for the consumer:~~

~~(1) A vocational rehabilitation program;~~

~~(2) A habilitation program, prepared under the Developmental Disabilities Assistance and Bill of Rights Act; and~~

~~(3) An education program, prepared under part B of the Individuals with Disabilities Education Act.~~

~~(e) Termination of services. If the service provider intends to terminate services to a consumer, the service provider documents the reason on the independent living plan or waived independent living plan and follows the procedures explained in §106.1105(f)(2)–(5) of this subchapter (relating to Eligibility).~~

§854.133. Waiting List.

~~(a) Independent living services for older individuals who are blind are provided when funding is available.~~

- ~~(b) A consumer is placed on a waiting list by the service provider when:~~
- ~~(1) the consumer meets the eligibility requirements explained in §106.1105 of this subchapter (relating to Eligibility);~~
 - ~~(2) the consumer has a signed independent living plan or a waiver stating that an independent living plan is unnecessary; and~~
 - ~~(3) there is no funding for a service on the independent living plan that must be purchased.~~
- ~~(c) The waiting list is reviewed every six months by the service provider to determine whether consumers are still eligible for and interested in services.~~
- ~~(d) Consumers are removed from the waiting list when funding becomes available, the consumer is no longer eligible, or the consumer is no longer interested.~~

§854.134. Scope of Services.

- ~~(a) All services provided in this section are subject to §106.1001(d) of this subchapter (relating to Allocation of Funds).~~
- ~~(b) All services are available in an accessible format for consumers who rely on alternative modes of communication.~~
- ~~(c) The service provider provides each independent living service for older individuals who are blind in accordance with the independent living plan or a waived independent living plan.~~
- ~~(d) The service provider may provide the following independent living services for older individuals who are blind under this subchapter:~~
- ~~(1) independent living core services, which are:~~
 - ~~(A) information and referral services;~~
 - ~~(B) independent living skills training;~~
 - ~~(C) peer counseling (including cross-disability peer counseling)~~
 - ~~(D) individual and systems advocacy; and~~
 - ~~(E) transition services; and~~
 - ~~(2) Independent living services, which are:~~

- ~~(A) —counseling services, including psychological and psychotherapeutic services;~~
- ~~(B) —services for securing housing or shelter (including community living) that support the purposes and titles of the Act, and services related to securing adaptive housing (including making appropriate modifications to spaces that serve or are occupied by individuals with disabilities);~~
- ~~(C) —rehabilitation technology;~~
- ~~(D) —mobility training;~~
- ~~(E) —services and training for individuals with cognitive and sensory disabilities, including life skills training and interpreter and reader services;~~
- ~~(F) —personal assistance services, including attendant care and the training of personnel providing such services;~~
- ~~(G) —surveys, directories, and other materials that identify appropriate housing, recreation opportunities, accessible transportation, and other support services;~~
- ~~(H) —consumer information programs on the rehabilitation and independent living services that are available under the Act, especially services that are available for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under the Act;~~
- ~~(I) —education and training necessary for living in a community and participating in community activities;~~
- ~~(J) —supported living;~~
- ~~(K) —transportation, including referral services, personal assistance, and training in the use of public transportation vehicles and systems;~~
- ~~(L) —physical rehabilitation;~~
- ~~(M) —therapeutic treatment;~~
- ~~(N) —the provision of needed prostheses and other appliances and devices;~~
- ~~(O) —social and recreational services (individual and group);~~

- ~~(P) training for youth with disabilities that is designed to develop self-awareness, self-esteem and the ability to self-advocate, self-empower, and explore career options;~~
 - ~~(Q) services for children;~~
 - ~~(R) federal, state, or local training, counseling, or other assistance designed to help individuals with disabilities become independent and productive and live a good life;~~
 - ~~(S) preventive services that encourage independence and reduce the need for the services that are provided under the Act;~~
 - ~~(T) awareness programs that encourage an understanding of individuals with disabilities and help individuals integrate into the community; and~~
 - ~~(U) other services, as needed, which are consistent with the provisions of the Act; and~~
- ~~(3) independent living services for older individuals who are blind, which are:~~
- ~~(A) the provision of eyeglasses and other visual aids;~~
 - ~~(B) the provision of services and equipment to help an older individual who is blind become mobile and self-sufficient;~~
 - ~~(C) mobility training, braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;~~
 - ~~(D) guide services, reader services, and transportation; and~~
 - ~~(E) any other appropriate services which are consistent with the provisions of the Act to help an older individual who is blind cope with the activities of daily living, including supportive services and rehabilitation teaching services.~~

SUBCHAPTER D. DIVISION 4: CONSUMER PARTICIPATION

§854.140. Consumer Participation System.

- ~~(a) The service provider administers the consumer participation system in accordance with the rules in this subchapter, the standards, and the contract requirements.~~
- ~~(b) The service provider provides independent living core services, as defined in §106.1111(d)(1) of this subchapter (relating to Scope of Services), at no cost to the consumer.~~

- ~~(e) Independent living services defined in §106.1111(d)(2) of this subchapter and independent living services for older individuals who are blind as defined in §106.1111(d)(3) of this subchapter are subject to the rules in this division.~~
- ~~(d) The service provider gathers financial information about the consumer to determine the consumer's adjusted gross income and the percentage of the federal poverty level for that income.~~
- ~~(e) The service provider charges the consumer a fee for each service provided in §106.1111(d)(2) and (3) of this subchapter, according to the consumer's percentage of the federal poverty level.~~
- ~~(f) The consumer or consumer's representative signs a consumer participation agreement. Signing the agreement acknowledges the amount of the consumer's fee for services and provides written agreement that:
 - ~~(1) the information provided by the consumer or the consumer's representative about the consumer's household size, annual gross income, allowable deductions, and comparable services or benefits is true and accurate; or~~
 - ~~(2) the consumer or the consumer's representative chooses not to provide information about the consumer's household size, annual gross income, allowable deductions, and comparable services or benefits.~~~~
- ~~(g) The service provider does not initiate or authorize services subject to §106.1111(d)(2) or (3) of this subchapter until the consumer or the consumer's representative signs the consumer's participation agreement.~~
- ~~(h) If the consumer chooses not to provide information on the consumer's household size, annual gross income, allowable deductions, and comparable services or benefits, the consumer agrees to pay the entire cost of services.~~
- ~~(i) The consumer reports to the service provider as soon as possible all changes to household size, annual gross income, allowable deductions, and comparable services or benefits and signs a new consumer's participation agreement.~~
- ~~(j) When the consumer signs a new participation agreement, the new amount of the consumer's fee for service takes effect the beginning of the following month. The new amount is not retroactive.~~
- ~~(k) The service provider must develop a process to reconsider and adjust the consumer's fee for service based on circumstances that are both extraordinary and documented. This may include assessing the consumer's ability to pay the consumer's fee for service.~~

- ~~(l) Only the service provider's executive director or designee has authority to reconsider and adjust a consumer's fee for service.~~
- ~~(m) Extraordinary circumstances are:
 - ~~(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 consumer's home or personally owned vehicle; or~~
 - ~~(7) other extenuating circumstances for which the consumer makes a request and provides supporting documentation.~~~~
- ~~(n) The consumer's calculated fee for service remains in effect during the reconsideration and adjustment process.~~
- ~~(o) The service provider:
 - ~~(1) uses program income that is received from the consumer participation system only to provide services that are outlined in §106.1111(d)(2) and (3) of this subchapter; and~~
 - ~~(2) reports fees collected to DARS as program income.~~~~
- ~~(p) The service provider does not use program income received from the consumer participation system to supplant any other fund sources.~~
- ~~(q) DARS does not pay any portion of the consumer's fee for service.~~
- ~~(r) The consumer's participation agreement and all financial information collected by the service provider are subject to any data use agreement between DARS and the service provider.~~
- ~~(s) The consumer's participation agreement and all financial information collected by the service provider are subject to subpoena.~~

§854.141. Fee Schedule Amount.

- ~~(a) The service provider is required to use the DARS fee schedule and instructions to calculate the consumer's fee for service.~~
- ~~(b) Factors that affect the consumer's fee for service are:
 - ~~(1) household size;~~
 - ~~(2) annual gross income; and~~
 - ~~(3) allowable deductions.~~~~
- ~~(c) The household size equals any person living inside or outside of the home who is eligible to be claimed as a dependent of the consumer on the consumer's federal income tax return, or, if the consumer is a minor, any other person living inside or outside of the home who is eligible to be claimed as a dependent of the consumer's parent or guardian on the parent or guardian's federal income tax return.~~
- ~~(d) The consumer's annual gross income:
 - ~~(1) equals the total annual gross income received by the household; and~~
 - ~~(2) includes all income classified as taxable income by the Internal Revenue Service before federally allowable deductions are applied.~~~~
- ~~(e) The consumer's allowable deductions are limited to the consumer's expenses in the following categories:
 - ~~(1) attendant care;~~
 - ~~(2) rent or home mortgage payments;~~
 - ~~(3) court-ordered child support payments made by the consumer for financially dependent children who were not included in the calculation of household size; and~~
 - ~~(4) medical or dental expenses for treatment primarily intended to alleviate or prevent a physical or mental illness or manage a disability, with the expenses limited to the cost of:
 - ~~(A) diagnosis, cure, alleviation, treatment, or prevention of disease;~~
 - ~~(B) treatment of any affected body part or function;~~
 - ~~(C) medical services legally delivered by physicians, surgeons, dentists, and other medical practitioners;~~~~~~

- ~~(D)—medications, medical supplies, and diagnostic devices;~~
 - ~~(E)—medical and dental health care insurance premiums;~~
 - ~~(F)—transportation to receive medical or dental care; and~~
 - ~~(G)—medical or dental debt that the family is paying on an established payment plan.~~
- ~~(f) The service provider calculates the allowable deductions using the actual amounts the consumer paid during the previous 12-month period.~~
- ~~(g) The consumer provides the most recent tax return available as proof of annual gross income and allowable deductions. If the consumer has no tax return, the consumer provides bank statements, medical records, receipts, proof of benefits awards, and other documentation to demonstrate annual gross income and allowable deductions.~~
- ~~(h) If the consumer does not provide documentation supporting the household's allowable deductions, the service provider determines the consumer's fee for service based on the consumer's documented annual gross income with no allowable deductions.~~
- ~~(i) The consumer's fee for service is equal to the amount on the DARS sliding fee scale according to the household's annual adjusted income (that is, the annual gross income minus the allowable deductions).~~
- ~~(j) The service provider uses the most current sliding fee scale and instructions published by DARS to determine the consumer's fee for service.~~
- ~~(k) The procedures, fee schedule, and instructions that DARS uses to calculate a consumer's fee for service is available from DARS, between 8:00 a.m. and 5:00 p.m. on business days.~~

~~§854.142. Insurance Payments.~~

- ~~(a) If the consumer has medical and dental insurance that covers an independent living service for older individuals who are blind received by the consumer and the agreement for in-network services made between the insurance company and the service provider or service provider's subcontractor requires that the service provider or subcontractor accept as payment in full the deductible, copayment, or coinsurance and insurance reimbursement, then the consumer's fee for service is either the deductible, copayment, or coinsurance, or the amount calculated by the DARS fee schedule, whichever is less.~~
- ~~(b) The consumer pays the premiums for medical and dental insurance. Neither DARS nor the service provider pays the premiums.~~

- ~~(c) The premiums for medical and dental insurance do not count toward meeting the consumer's fee for service.~~

SUBCHAPTER D. DIVISION 5: CONSUMER RIGHTS

§854.150. Rights of Consumers.

- ~~(a) In accordance with applicable legal provisions, DARS 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 independent living services for older individuals who are blind, the consumer must be blind or have a severe visual impairment; however, that requirement is not considered discrimination against any individual on the basis of disability.~~
- ~~(b) The service provider notifies the consumer in writing about the rights included in subsection (a) of this section; §106.1303 of this division (relating to Complaint Process); and §106.1201 of this subchapter (relating to Consumer Participation System):~~
 - ~~(1) when a consumer applies for services;~~
 - ~~(2) when the service provider determines that a consumer is ineligible for services; and~~
 - ~~(3) when the service provider intends to terminate services.~~
- ~~(c) Consumer rights are available in an accessible format for consumers who rely on alternative modes of communication.~~

§854.151. Complaint Process.

- ~~(a) Filing a complaint with DARS:~~
 - ~~(1) A consumer may file a complaint with DARS alleging that a requirement of independent living services for older individuals who are blind was violated. A complaint may be filed directly with DARS without having been filed with the service provider.~~
 - ~~(2) A complaint may be filed by:~~
 - ~~(A) mail to DARS: Texas Health and Human Services Commission, Office of the Ombudsman, MC H-700, P.O. Box 13247, Austin, Texas 78711-3247;~~

~~(B) phone: 1-877-787-8999 or Relay Texas for people with a hearing or speech disability: 7-1-1 or 1-800-735-2989;~~

~~(C) fax: 1-888-780-8099; or~~

~~(D) online: <http://www.hhsc.state.tx.us/ombudsman/contact.shtml>~~

~~(3) More information regarding the complaint process may be obtained by calling the Office of the Ombudsman at 1-877-787-8999 or Relay Texas for people with a hearing or speech disability: 7-1-1 or 1-800-735-2989.~~

~~(b) Filing a complaint with the Client Assistance Program (CAP).~~

~~(1) The CAP is implemented by Disability Rights Texas (DRTx), a legal services organization whose mission is to protect the human, service, and legal rights of persons with disabilities in Texas.~~

~~(2) DRTx advocates are not employees of DARS. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.~~

~~(3) A consumer who is enrolled in independent living services for older individuals who are blind or the consumer's representative may file a complaint with DRTx alleging that a requirement of independent living services for older individuals who are blind was violated. The complaint need not be filed with the service provider.~~

~~(4) A complaint may be filed by:~~

~~(A) phone: 1-800-252-9108; or~~

~~(B) videophone: 1-866-362-2851.~~

~~(5) More information about the complaint process is available by calling DRTx at 1-800-252-9108 or videophone at 1-866-362-2851.~~

~~SUBCHAPTER D. DIVISION 6: TECHNICAL ASSISTANCE AND TRAINING~~

~~§854.160. Administering Agency's Role in Providing Technical Assistance.~~

~~(a) DARS gives the service provider technical assistance, as needed, to help the service provider offer a full range of independent living services for older individuals who are blind.~~

~~(b) Technical assistance may include:~~

- ~~(1) help to expand a service provider's capacity to provide a full range of independent living services; and~~
- ~~(2) training on:
 - ~~(A) the independent living philosophy; and~~
 - ~~(B) the administration, operation, evaluation, and performance of independent living services for older individuals who are blind according to the rules in this subchapter, the standards, and the contract requirements.~~~~

SUBCHAPTER D. DIVISION 7: REFERRALS

§854.170. Expectations of Administering Agency's Employees.

- ~~(a) Individuals seeking independent living services for older individuals who are blind are referred to the local service provider.~~
- ~~(b) If an individual calls DARS to request independent living services for older individuals who are blind, DARS:
 - ~~(1) gives the individual the contact information for the service provider;~~
 - ~~(2) obtains the individual's permission to forward the individual's name and contact information to the service provider; and~~
 - ~~(3) forwards the individual's name and contact information.~~~~