

CHAPTER 856. DIVISION FOR REHABILITATION 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*.

Estimated Publication Date of the Proposal in the *Texas Register*: **May 4, 2018**

Estimated End of Comment Period: **June 4, 2018**

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 856, relating to the Division for Rehabilitation Services:

Subchapter C. Provision of Vocational Rehabilitation Services, §856.57

Subchapter G. Criss Cole Rehabilitation Center, §§856.83 - 856.88

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 856 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 became integrated into a single VR program. The rules to support this integration were effective November 6, 2017.

Currently, TWC's Chapter 852, Purchase of Medical Goods and Services by the Texas Workforce Commission - Vocational Rehabilitation Services, contains a single rule, §851.1, Alternative Purchasing Methods--Rates for Medical Services. To align this purchasing rule with other TWC VR procurement and programmatic operations, this chapter should be repealed. Section 852.1 is proposed to be adopted as a rule in Chapter 856 and updated to reflect statutory changes.

Currently, VR program rules for the Criss Cole Rehabilitation Center (CCRC) are in Chapter 854, Subchapter A. CCRC is a comprehensive rehabilitation facility in Austin and is operated by TWC. CCRC provides evaluation, training, and related services in a residential and community setting to help customers who are blind or Deafblind accomplish their employment and independent living goals. CCRC is a VR service and should be in Chapter 856 with the remainder of the VR program rules. TWC proposes amendments to Chapter 856, Subchapter G, to contain all rules for the CCRC program. In a separate but concurrent rulemaking, TWC proposes the repeal of Chapter 854, Subchapter A.

Additionally, with the transfer of VR services from the Texas Department of Assistive and Rehabilitative Services (DARS) to TWC, Chapter 856 is no longer consistent with state law. For example, Chapter 856 contains many references to DARS and its organizational structure, and it 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 856. TWC also proposes amendments to replace the word "consumer" with "customer" to be consistent with TWC terminology.

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 C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

TWC proposes the following amendments to Subchapter C:

§856.57. Alternative Purchasing Methods--Rates for Medical Services

New §856.57, formerly §852.1, is moved from Chapter 852 and updates its provisions to align with TWC procurement and programmatic operations.

SUBCHAPTER G. CRISS COLE REHABILITATION CENTER

TWC proposes the following amendments to Subchapter G:

§856.83. Definitions

New §856.83, formerly §854.3, is moved from Chapter 854 and updates its provisions to add the definition of "Deafblind" and provides the requirements to be considered an individual who is Deafblind for purposes of eligibility for CCRC services. The definition of Deafblind replicates the wording of 29 USC Chapter 21, §1905, relating to Definitions. Additionally, the term "consumer" has been changed to "customer," consistent with TWC's terminology, with no change to the underlying definition.

§856.84. Initial Eligibility

New §856.84 replaces repealed §854.4 and updates its provisions to add the initial eligibility criteria to reflect the requirements for acceptance into CCRC for VR services. The eligibility requirements are similar to the requirements previously found in TWC Division of Blind Services rule §854.4. Only current VR customers are eligible for VR services, and they must be referred by a VR counselor for admission. Each customer must have a computerized criminal history check as part of the initial eligibility process. A risk evaluation must be completed if the criminal history check identifies a criminal history. To properly manage this residential program and ensure that all eligibility criteria are met, TWC is amending this section to clarify that all eligibility criteria other than Texas residency still apply to non-Texas residents seeking admission to the CCRC VR Training Program. Furthermore, because TWC has an integrated VR program, there is no need for priority to be given to customers; therefore, §854.4(b) is proposed to be repealed. Additionally, the term "consumers" has been changed to "customers," consistent with TWC's terminology, with no change to the definition.

§856.85. Continuing Eligibility

New §856.85 is added to specify that a customer must maintain eligibility to continue receiving services. Services may be discontinued if the customer is not in compliance with the requirements.

§856.86. Services

New §856.86 replaces repealed §854.5 and updates its provisions to provide a list of current services that TWC provides. Services such as communication systems and tools are added to address the Deafblind customer population. The amendment also updates the division name, replaces the word "consumer" with "customer," and ties the services that a customer receives to the individualized plan for employment.

§856.87. Customer Participation and Comparable Services and Benefits

New §856.87 replaces repealed §854.6 and updates the statutory references and replaces the word "consumer" with "customer."

§856.88. Payment of Shift Differentials

New §856.88 replaces repealed §854.7 and updates its provisions to correlate with TWC's employment business practices.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years that 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 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 businesses, microbusinesses, or rural communities 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, codified at 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 rule will be in effect:

- the proposed rule will not create or eliminate a government program;
- implementation of the proposed rule will not require the creation or elimination of employee positions;
- implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to TWC;
- the proposed rule will not require an increase or decrease in fees paid to TWC;
- the proposed rule will not create a new regulation;
- the proposed rule will not expand, limit, or eliminate an existing regulation;
- the proposed rule will not change the number of individuals subject to the rule; and
- the proposed rule 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 or rural communities, as these proposed rules place 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 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 proposed rules will be to comply with statutory requirements, unify and clarify rule language, update terminology, and improve consistency within the VR 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 Boards and the Rehabilitation Council of Texas (RCT). TWC provided the concept paper regarding these rule amendments to the Boards and RCT's Policy Committee 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 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 81, 301, and 302.

Chapter 856. DIVISION FOR REHABILITATION SERVICES

SUBCHAPTER C. PROVISION OF VOCATIONAL REHABILITATION SERVICES

§856.57. Alternative Purchasing Methods - Rates for Medical Services.

Under Texas Labor Code §352.054, this rule adopts standards governing the determination of rates paid for medical services provided by the Agency. The rates determined under these standards are reevaluated annually:

- (1) Rates shall be established based on Medicare and Medicaid schedules for current procedural terminology. Where Medicare and Medicaid schedules are not applicable, rates that represent best value shall be established based on factors that include reasonable and customary industry standards for each specific service.
- (2) Rates shall be established at a level adequate to ensure that enough qualified providers are available to provide assessment and treatment within a geographic distribution that reflects customer or claimant distribution.
- (3) Exceptions to established rates may be made on a case-by-case basis by the Agency's medical director or optometric consultant.

SUBCHAPTER G. CRISS COLE REHABILITATION CENTER

§856.83. Definitions.

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

- (1) Blind--An individual whose visual acuity with best correction is 20/200 or less in the better eye; or an individual 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) Customer--An individual with a disability who has applied for or who is receiving VR services.
- (3) Deafblind--An individual:
 - (A) who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

- (B) who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and
- (C) for whom the combination of impairments described in subparagraphs (A) and (B) of this paragraph cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;
- (D) who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or
- (E) who meets such other requirements as the Secretary of Education may prescribe by regulation.

§856.84. Initial Eligibility.

(a) To be eligible for VR services at CCRC, an individual must be:

- (1) at least 18 years of age;
- (2) legally blind or Deafblind;
- (3) a Texas resident;
- (4) a current VR customer; and
- (5) referred by a VR counselor for services at CCRC.

(b) Any individual described in subsection (a) of this section shall be subject to a computerized criminal history (CCH) check, and the results of the CCH will be evaluated as to the individual's eligibility for VR services at CCRC. A risk evaluation must be completed if the CCH check identifies a criminal history. TWC will perform a risk evaluation to include the following factors, but not be limited to the:

- (1) severity of the offense;
- (2) time frame of the offense;
- (3) rehabilitation of the customer; and

(4) parole and community supervision terms.

(c) Notwithstanding subsection (a)(3) of this section, a non-Texas resident who is receiving services from an entity in another state and who otherwise meets the requirements set out in subsections (a) and (b) of this section may be considered for admission and training on a space-available basis, subject to an agreement between the out-of-state entity and the Agency on payment of cost of services provided to the individual.

§856.85 Continuing Eligibility.

(a) To maintain eligibility while receiving CCRC services, the customer (student) must comply with:

- (1) the Student Handbook; and
- (2) relevant state and federal laws.

(b) Upon finding that the customer no longer complies with subsection (a) of this section, continuing eligibility for services may be revoked and CCRC services discontinued.

§856.86. Services.

(a) CCRC may provide services such as:

- (1) assessment;
- (2) individualized and small-group training;
- (3) home and personal-management training;
- (4) orientation and mobility training;
- (5) braille training;
- (6) low-vision assessment and training;
- (7) recreation activities;
- (8) social skills training;
- (9) communication systems and tools;

(10) technology; and

(11) career guidance.

(b) This list should not be interpreted as comprehensive; ancillary services may also be available.

(c) Services are provided in accordance with VR as listed on the customer's individualized plan for employment.

§856.87. Customer Participation and Comparable Services and Benefits.

For information about customer participation and comparable benefits, refer to §856.59, relating to Purpose of Customer Participation, and §856.71, relating to Comparable Services and Benefits.

§856.88. Payment of Shift Differentials.

(a) The Agency's VR Division (VRD) director is authorized to pay a shift differential to eligible VR employees. The shift differential is paid in addition to the employee's regular base pay, exclusive of longevity and benefit replacement pay.

(b) The VRD director is authorized to determine the VR 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 Agency policies that concern staggered work hours.

SUBCHAPTER GH. CERTIFICATE OF BLINDNESS FOR TUITION WAIVER