

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

ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF STATE.

ON **APRIL 16, 2024**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Publication Date of the Adoption in the *Texas Register*: **May 3, 2024**
The Rules are Effective: **May 6, 2024**

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

- Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §853.1 - §853.6
- Subchapter B. Services, §853.10
- Subchapter C. Customer Financial Participation, §853.21
- Subchapter D. Case Documentation, §853.30
- Subchapter E. Customer's Rights, §853.40

Amended §§853.3 - 853.6, 853.10, 853.21, 853.30, and 853.40 are adopted *without changes* to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the adopted rule text will not be published.

Amended §853.1 and §853.2 are adopted *with changes* to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 853 rule change is to amend eligibility for the OIB program, clarify language for consistency purposes, and complete its statutorily required four-year review.

Texas Government Code §2001.039 requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 853, Independent Living Services for Older Individuals Who Are Blind, and readopts the rules as amended.

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. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

TWC adopts amendments to Subchapter A, as follows:

§853.1. Definitions

Section 853.1 is amended to remove references to Independent Living Services (ILS) and add definitions for "Older Individuals Who are Blind (OIB)" and "significant visual impairment." Subsequent paragraphs are renumbered.

At adoption, TWC amended §853.1 to correct the name of TWC's Vocational Rehabilitation Division.

§853.2. Referral

Section 853.2 is amended to remove a reference to ILS, add additional referral sources, and to more clearly describe the referral process.

At adoption, TWC amended §853.2(c) to change "referral only" to "minimal services successful closure" to make the language consistent with program terminology and other amendments within this section and this chapter.

§853.3. Accessible Communication

Section 853.3 is amended to remove references to ILS.

§853.4. Application

Section 853.4 is amended to more clearly describe the application process.

§853.5. Eligibility

Section 853.5 is amended to remove a reference to ILS and add "significant visual impairment" to the eligibility criteria.

§853.6. Ineligibility Determination

Section 853.6 is amended to clarify language.

SUBCHAPTER B. SERVICES

TWC adopts amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to clarify the time frame for developing an ILP and to update the form number.

SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

TWC adopts amendments to Subchapter C, as follows:

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to clarify language relating to customer participation in cost of service and to remove a reference to ILS.

SUBCHAPTER D. CASE DOCUMENTATION

TWC adopts amendments to Subchapter D, as follows:

§853.30. Case Closure

Section 853.30 is amended to add language regarding minimal services closures and remove a subsection about post-closure services. The removed subsection included obsolete terminology that was later replaced but is no longer applicable to OIB.

SUBCHAPTER E. CUSTOMER'S RIGHTS

TWC adopts amendments to Subchapter E, as follows:

§853.40. Rights of Customers

Section 853.40 is amended to remove references to ILS and add receiving a diagnosis of significant visual impairment as one of the requirements to receive OIB services.

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

PART III. PUBLIC COMMENTS

The public comment period closed on February 19, 2024. No comments were received.

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

- Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and
- Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

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 Vocational Rehabilitation Division 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 Older Individuals Who Are Blind (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 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 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) Older Individuals Who Are Blind (OIB)--The independent living services program that serves individuals ages 55 and over who are blind or visually impaired.
- (16) 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.
- (17) Significant visual impairment--A disease or condition of the eye that does not meet the definitions of Blind or Low Vision but does create a significant impediment to independent living and cannot be corrected with glasses or contact lenses.
- (18) 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 OIB services in a variety of ways, 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;
 - (5) family, customer representative, and friends;
 - (6) contract providers; or
 - (7) online self-referral portal.
- (b) A referral shall include the name of the individual seeking services, the address where the individual resides, and an email address and telephone number, if available.
- (c) During the referral process, OIB staff may determine the level of services needed by the customer, provide minimal services, or verify the customer's eligibility criteria. Minimal services may include information and referral, a guide to independent living, bump dots for kitchen appliances, and low-cost magnifiers. If minimal services are all that a customer requires, the case may be closed as a minimal services successful closure.
- (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 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 completed the application process when:

- (1) the individual or the individual's representative has completed and signed the OIB application form and an OIB staff member has entered the electronic PIN into the case management system;
- (2) the individual or the individual's representative has provided the information necessary to initiate an assessment to determine eligibility and service delivery; and
- (3) the individual or the individual's representative is available to complete the assessment process to determine eligibility.

§853.5. Eligibility.

- (a) To be eligible for OIB, a customer must:
 - (1) be age 55 or older;
 - (2) be blind or have low vision or a significant visual impairment, 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, low vision, or a significant visual impairment 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 and in compliance with Texas Government Code §2054.460, if applicable. 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 contact information 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 within 90 days of the eligibility date. If the ILP cannot be completed within 90 days, then OIB staff must document the reason for the delay in a case note.
- (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 (VR 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.

SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

§853.21. Customer Participation in the Cost of Services.

- (a) Some independent living services, as set forth in §853.11, relating to Scope of Services, may be subject to customer participation in cost of service as defined in OIB policy.
- (b) OIB staff shall administer the customer participation system in accordance with the rules in this chapter, the OIB policy manual, and 34 CFR §367.67(b)(1).
- (c) OIB staff shall provide those independent living services not requiring customer participation in cost of services as set forth 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 an ILP acknowledging the customer's contribution 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 applicable 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 an amended ILP.
- (i) When the customer amends the ILP , the new customer's contribution for services takes effect the beginning of the following month. The new contribution shall not be applied retroactively.
- (j) OIB staff shall develop a process to reconsider and adjust the customer's contribution 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 contribution 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 only to provide services outlined in §853.11 of this chapter; and
 - (2) report fees collected as program income.
- (m) The Agency may not use program income received from the customer to supplant any other fund sources.
- (n) The Agency may not pay any portion of the customer's contribution.
- (o) The customer's ILP and all financial information collected by OIB staff are subject to subpoena.

SUBCHAPTER D. CASE DOCUMENTATION

§853.30. Case Closure.

- (a) The Agency closes a case when minimal services have been provided enhancing the applicant's independence and the applicant does not need the full array of OIB services, or 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.

SUBCHAPTER E. CUSTOMER'S 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 OIB services, the customer must be blind or have a low vision diagnosis or a significant visual impairment as defined in §853.1; 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 OIB services, or the customer's representative, may file a complaint with DRTx alleging that a requirement of OIB was violated. The complaint does not need to be filed with OIB.