

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

3
4 **ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
5 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT**
6 **TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF**
7 **SECRETARY OF STATE.**

8
9 The Texas Workforce Commission (TWC) adopts amendments to the following sections
10 of Chapter 853, relating to Independent Living Services for Older Individuals Who Are
11 Blind:

- 12
- 13 Subchapter A. Independent Living Services for Older Individuals Who Are Blind,
- 14 §853.1 - §853.6
- 15 Subchapter B. Services, §853.10
- 16 Subchapter C. Customer Financial Participation, §853.21
- 17 Subchapter D. Case Documentation, §853.30
- 18 Subchapter E. Customer's Rights, §853.40
- 19

20 Amended §§853.3 - 853.6, 853.10, 853.21, 853.30, and 853.40 are adopted *without*
21 *changes* to the proposal, as published in the January 5, 2024, issue of the *Texas Register*
22 (49 TexReg 29), and, therefore, the adopted rule text will not be published.

23
24 Amended §853.1 and §853.2 are adopted *with changes* to the proposal, as published in
25 the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the
26 adopted rule text will be published.

27
28 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

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

32
33 Texas Government Code §2001.039 requires a state agency to review and consider for
34 readoption each of its rules every four years. In accordance with the statute, TWC has
35 reviewed Chapter 853, Independent Living Services for Older Individuals Who Are
36 Blind, and readopts the rules as amended.

37
38 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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

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

3 TWC adopts amendments to Subchapter A, as follows:

4
5 **§853.1. Definitions**

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

9
10 At adoption, TWC amended §853.1 to correct the name of TWC's Vocational
11 Rehabilitation Division.

12
13 **§853.2. Referral**

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

16
17 At adoption, TWC amended §853.2(c) to change "referral only" to "minimal services
18 successful closure" to make the language consistent with program terminology and other
19 amendments within this section and this chapter.

20
21 **§853.3. Accessible Communication**

22 Section 853.3 is amended to remove references to ILS.

23
24 **§853.4. Application**

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

26
27 **§853.5. Eligibility**

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

30
31 **§853.6. Ineligibility Determination**

32 Section 853.6 is amended to clarify language.

33
34 **SUBCHAPTER B. SERVICES**

35 TWC adopts amendments to Subchapter B, as follows:

36
37 **§853.10. Independent Living Plan**

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

40
41 **SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION**

42 TWC adopts amendments to Subchapter C, as follows:

43
44 **§853.21. Customer Participation in the Cost of Services**

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

1
2 **SUBCHAPTER D. CASE DOCUMENTATION**

3 TWC adopts amendments to Subchapter D, as follows:
4

5 **§853.30. Case Closure**

6 Section 853.30 is amended to add language regarding minimal services closures and
7 remove a subsection about post-closure services. The removed subsection included
8 obsolete terminology that was later replaced but is no longer applicable to OIB.
9

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

11 TWC adopts amendments to Subchapter E, as follows:
12

13 **§853.40. Rights of Customers**

14 Section 853.40 is amended to remove references to ILS and add receiving a diagnosis of
15 significant visual impairment as one of the requirements to receive OIB services.
16

17 TWC hereby certifies that the rules have been reviewed by legal counsel and found to be
18 within TWC's legal authority to adopt.
19

20 **PART III. PUBLIC COMMENTS**

21 The public comment period closed on February 19, 2024. No comments were received.
22

23 **PART IV. STATUTORY AUTHORITY**

24 The rules are adopted under:

25 --Texas Labor Code §352.103(a), which provides TWC with the specific authority to
26 establish rules for providing vocational rehabilitation services; and

27 --Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to
28 adopt, amend, or repeal such rules as it deems necessary for the effective administration
29 of TWC services and activities.
30

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

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

3
4 **SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER**
5 **INDIVIDUALS WHO ARE BLIND**

6
7 **§853.1. Definitions.**

8
9 In addition to the definitions contained in Texas Labor Code §352.001, 34 CFR
10 §361.5, and §856.3 of the Agency's **Vocational Rehabilitation Division Division**
11 **for Rehabilitation Services** rules, the following words and terms, when used in
12 this chapter, shall have the following meanings:

- 13
14 (1) Act--The Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).
15
16 (2) Adjusted income--The dollar amount that is equal to a household's
17 annual gross income, minus allowable deductions.
18
19 (3) Applicant--An individual who applies for **Independent Living Services**
20 **for Older Individuals Who Are Blind (OIB)**~~(ILS-OIB)~~ services.
21
22 (4) Attendant care--A personal assistance service provided to an individual
23 with significant disabilities to aid in performing essential personal
24 tasks, such as bathing, communicating, cooking, dressing, eating,
25 homemaking, toileting, and transportation.
26
27 (5) Blind--An individual having not more than 20/200 visual acuity in the
28 better eye with correcting lenses or visual acuity greater than 20/200
29 but with a limitation in the field of vision such that the widest diameter
30 of the visual field subtends an angle no greater than 20 degrees.
31
32 (6) Center for Independent Living (CIL)--Has the meaning assigned by
33 §702 of the Act (29 USC §796a).
34
35 (7) Client Assistance Program (CAP)--A federally funded program under
36 34 CFR Part 370 that provides information, assistance, and advocacy
37 for individuals with disabilities who are seeking or receiving services
38 from programs funded under the Act. In Texas, the designated agency
39 is Disability Rights Texas (DRTx).
40
41 (8) Comparable services or benefits--Services and benefits that are
42 provided or paid for, in whole or part, by other federal, state, or local
43 public programs, or by health insurance, third-party payers, or other
44 private sources.
45

- 1 (9) Customer--An individual who is eligible for and receiving ~~OIB~~ ~~HS-~~
2 ~~OIB~~ services under this chapter.
3
- 4 (10) Customer participation system--The system for determining and
5 collecting the financial contribution that a customer may be required to
6 pay for receiving ~~OIB~~ ~~HS-~~
7 ~~OIB~~ services.
8
- 9 (11) Customer representative--Any individual chosen by a customer,
10 including the customer's parent, guardian, other family member, or
11 advocate. If a court has appointed a guardian or representative, that
12 individual is the customer's representative.
13
- 14 (12) Federal Poverty Guidelines--The poverty guidelines updated
15 periodically in the *Federal Register* by the US Department of Health
16 and Human Services under the authority of 42 USC §9902(2), found at
17 <https://aspe.hhs.gov/poverty-guidelines>.
18
- 19 (13) Independent Living Plan (ILP)--A written plan in which the customer
20 and OIB staff have collaboratively identified the services that the
21 customer needs to achieve the goal of living independently.
22
- 23 (14) Low vision--A condition of having a visual acuity not more than 20/70
24 in the better eye with correcting lenses, or visual acuity greater than
25 20/70 but with a limitation in the field of vision such that the widest
26 diameter of the visual field subtends an angle no greater than 30
27 degrees, or having a combination of both.
28
- 29 (15) Older Individuals Who Are Blind (OIB)--The independent living
30 services program that serves individuals ages 55 and over who are blind
31 or visually impaired.
- 32 ~~(16)~~ ~~(15)~~ Significant disability--A significant physical, mental, cognitive, or
33 sensory impairment that substantially limits an individual's ability to
34 function independently in the family or community.
35
- 36 (17) Significant visual impairment--A disease or condition of the eye that
37 does not meet the definitions of Blind or Low Vision but does create a
38 significant impediment to independent living and cannot be corrected
39 with glasses or contact lenses.
40
- 41 ~~(18)~~ ~~(16)~~ Transition services--Services that:
42
- 43 (A) facilitate the transition of individuals with significant disabilities
44 from nursing homes and other institutions to home and
45 community-based residences, with the requisite supports and
46 services; and

- 1
2 (B) provide assistance to individuals with significant disabilities who
3 are at risk of entering institutions so that the individuals may
4 remain in the community.
5

6 **§853.2. Referral.**
7

- 8 (a) An individual may be referred for ~~OIB/LS/OIB~~ services ~~in by~~ a variety of
9 ~~ways~~organizations, including, but not limited to:

- 10 (1) a physician's office;
11
12 (2) a community organization;
13
14 (3) the Center for Independent Living (CIL);
15
16 (4) a senior community organization; ~~or~~
17
18 (5) family, customer representative, and friends;
19

20
21 (6) contract providers; or

22
23 (7) online self-referral portal.
24

- 25 (b) A referral shall include the name of the individual seeking services, the
26 address where the individual resides, and an email ~~e-mail~~ address and
27 telephone number, if available.
28

- 29 (c) During the referral process, OIB staff may determine the level of services
30 needed by the customer, provide minimal services, or shall verify the
31 customer's eligibility criteria, ~~determine the level of services needed by the~~
32 ~~customer, and provide minimal services~~ Minimal services may, ~~which can~~
33 include information and referral ~~guide, a guide to independent living,~~ bump
34 dots for kitchen appliances, and low-cost magnifiers. If minimal services are
35 all that a customer requires, the case ~~may can~~ be closed as a minimal services
36 successful closure~~referral only~~.
37

- 38 (d) For service delivery to begin, an individual shall submit a complete
39 application and document that all eligibility requirements are met.
40

41 **§853.3. Accessible Communication.**
42

- 43 (a) The Agency shall provide all members of the public with disabilities who are
44 seeking information or other services from the Agency access to and use of
45 electronic and information resources comparable to the access and use
46 provided to members of the public without disabilities, unless compliance

1 with this section imposes a significant difficulty or expense to the Agency
2 under Texas Government Code §2054.460.

3
4 (b) The Agency may use alternate methods or formats to provide timely access
5 by individuals with disabilities to Agency electronic and information
6 resources.

7
8 (c) The Agency shall ensure that ~~OIB ILS OIB~~ applicants and customers are
9 given the opportunity to request and receive communication from the Agency
10 in an alternate format or by alternate methods.

11
12 **§853.4. Application.**

13
14 An individual is considered to have completed the ~~submitted an~~ application
15 process when ~~the individual or the individual's representative, as appropriate:~~

- 16
17 (1) the individual or the individual's representative has completed and
18 signed the OIB application form and an OIB staff member has entered
19 the ~~including entry of~~ electronic PIN into the case management
20 system ~~the ILS OIB application form~~;
21
22 (2) the individual or the individual's representative has provided the
23 information necessary to initiate an assessment to determine eligibility
24 and service delivery; and
25
26 (3) the individual or the individual's representative is available to complete
27 the assessment process to determine eligibility.

28
29 **§853.5. Eligibility.**

30
31 (a) To be eligible for ~~OIB ILS OIB~~, a customer must:

- 32
33 (1) be age 55 or older;
34
35 (2) be blind or have low vision or a significant visual impairment, as
36 defined in §853.1, relating to Definitions;
37
38 (3) be an individual for whom independent living goals are feasible; and
39
40 (4) be present in Texas.

41
42 (b) Eligibility for blindness, ~~or~~ low vision, or a significant visual impairment is
43 determined by OIB staff based on the documented diagnosis of a licensed
44 practitioner.
45

- 1 (c) Individuals shall establish eligibility through existing data and information,
2 including, but not limited to, medical records and information used by the
3 Social Security Administration. The information may be obtained from the
4 applicant, the applicant's family members, or the applicant's representative.
5 OIB staff may assist in locating or obtaining existing documentation.
6
- 7 (d) The Agency shall substantively evaluate the documentation and application
8 to determine whether eligibility requirements are met.
9
- 10 (e) OIB staff shall endeavor to make an eligibility determination within 60 days
11 from the time a completed and signed application for services has been
12 received. The eligibility determination is conditional on the applicant's
13 availability to complete the assessment process, as set forth in §853.4(3) of
14 this subchapter. When an applicant is unavailable to complete such
15 assessment process in a timely manner due to unforeseen circumstances,
16 which may include, but are not limited to, medical conditions or
17 hospitalizations, the 60-day period shall be abated until the applicant is
18 available to complete the necessary assessment process to determine
19 eligibility.
20
- 21 (f) Eligibility cannot be established unless and until all required elements under
22 subsection (a) of this section have been completed and documented,
23 including any assessment to establish eligibility.
24
- 25 (g) Eligibility requirements are applied without regard to an individual's age,
26 color, creed, gender, national origin, race, religion, or length of time present
27 in Texas.
28

29 **§853.6. Ineligibility Determination.**

- 30
- 31 (a) A determination of ineligibility shall be based only on a substantive
32 evaluation of an applicant's completed and signed application, including all
33 documentation required to establish eligibility under §853.5(a) of this
34 subchapter.
35
- 36 (b) Before making a determination of ineligibility, OIB staff shall provide the
37 applicant or the applicant's representative, as appropriate, an opportunity to
38 consult with OIB staff. OIB staff shall notify the applicant, or the applicant's
39 representative, as appropriate, of an ineligibility determination. Notice shall
40 be provided in accessible format and through accessible methods and in
41 compliance with, as required under Texas Government Code §2054.460, if
42 applicable. The notice shall include the following:
43
- 44 (1) A brief statement of the ineligibility determination, with reference to
45 the requirements under this chapter and any deficiencies;
46

- (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 ~~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 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 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 (VR 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.

- 1 (g) OIB staff shall review the ILP at least annually with the customer or the
2 customer's representative, as appropriate, to assess the customer's progress in
3 meeting the objectives identified in the ILP.
4
5 (h) OIB staff shall incorporate any revisions to the ILP that are necessary to
6 reflect changes in the customer's goals, intermediate objectives, or needs.
7
8 (i) The customer must inform the Agency in a timely manner of changes that
9 will affect the provision of services, including, but not limited to, the
10 customer's unavailability to receive services.
11

12 **SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION**

13 **§853.21. Customer Participation in the Cost of Services.**

- 14
15
16 (a) ~~Some~~ ~~The following~~ independent living services, as ~~set forth~~ ~~defined~~ in
17 §853.11, relating to Scope of Services, ~~may be~~ ~~are~~ subject to customer
18 participation in cost of service ~~as defined in OIB policy~~.
19
20 ~~(1) — Transportation, excluding transportation for diagnostic services; and~~
21 ~~—~~
22 ~~(2) — Adaptive aids or appliances that cost more than \$50.~~
23
24 (b) OIB staff shall administer the customer participation system in accordance
25 with the rules in this chapter, the ~~OIB-ILS-OIB~~ policy manual, and 34 CFR
26 §367.67(b)(1).
27
28 (c) OIB staff shall provide those independent living services ~~defined as~~ not
29 requiring customer participation in cost of services ~~as set forth~~ in §853.11 of
30 this chapter at no cost to the customer.
31
32 (d) OIB staff shall determine the customer's adjusted gross income and the
33 percentage of the Federal Poverty Guidelines at [https://aspe.hhs.gov/poverty-](https://aspe.hhs.gov/poverty-guidelines)
34 [guidelines](https://aspe.hhs.gov/poverty-guidelines) for that income, based on documentation provided by the
35 customer.
36
37 (e) OIB staff is required to apply the Federal Poverty Guidelines at
38 <https://aspe.hhs.gov/poverty-guidelines> to determine customer participation.
39
40 (f) The customer or customer's representative shall sign ~~an ILP a customer~~
41 ~~participation agreement~~ acknowledging ~~the amount of~~ the customer's
42 ~~contribution~~ ~~fee~~ for services and providing written agreement that:
43
44 (1) the information provided by the customer or the customer's
45 representative about the customer's household size, annual gross

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

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

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

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

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

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

28
29 (1) an increase or decrease in income;

30
31 (2) unexpected medical expenses;

32
33 (3) unanticipated disability-related expenses;

34
35 (4) a change in family size;

36
37 (5) catastrophic loss, such as fire, flood, or tornado;

38
39 (6) short-term financial hardship, such as a major repair to the customer's
40 home or personally owned vehicle; or

41
42 (7) other extenuating circumstances for which the customer makes a
43 request and provides supporting documentation.

44
45 (k) The customer's contribution ~~calculated fee~~ for services remains in effect
46 during the reconsideration and adjustment process.

- 1
2 (l) OIB staff shall:
3
4 (1) use program income that is received from the customer ~~participation~~
5 ~~system~~ only to provide services outlined in §853.11 of this chapter; and
6
7 (2) report fees collected as program income.
8
9 (m) The Agency may not use program income received from the customer
10 ~~participation system~~ to supplant any other fund sources.
11
12 (n) The Agency may not pay any portion of the customer's
13 contribution~~participation fee~~.
14
15 (o) The customer's ILP~~participation agreement~~ and all financial information
16 collected by OIB staff are subject to subpoena.
17

18 SUBCHAPTER D. CASE DOCUMENTATION

19 §853.30. Case Closure.

- 20
21
22 (a) The Agency closes a case when minimal services have been provided
23 enhancing the applicant's independence and the applicant does not need the
24 full array of OIB services, or when the customer's ILP has been completed,
25 typically within 18 months of plan development. The case will be closed
26 sooner without completion of services if:
27
28 (1) the customer does not meet eligibility criteria;
29
30 (2) the customer is unavailable, for an extended period of time, to complete
31 an assessment of independent living needs and staff has made repeated
32 efforts to contact and encourage the applicant to participate;
33
34 (3) the customer has refused services or further services;
35
36 (4) the customer is no longer present in Texas;
37
38 (5) the customer's whereabouts are unknown;
39
40 (6) the customer's medical condition is rapidly progressive or terminal;
41
42 (7) the customer has refused to cooperate with the Agency; or
43
44 (8) the customer's case has been transferred to another agency.
45

1 (b) A customer or the customer's representative, as appropriate, shall be notified
2 of any case closure except when the customer's whereabouts are unknown.

3
4 ~~(c) Post closure services shall not normally exceed six months.~~

5
6 **SUBCHAPTER E. CUSTOMER'S RIGHTS**

7
8 **§853.40. Rights of Customers.**

9
10 (a) In accordance with applicable legal provisions, the Agency does not, directly
11 or through contractual or other arrangements, exclude, deny benefits to, limit
12 the participation of, or otherwise discriminate against any individual on the
13 basis of age, color, disability, national origin, political belief, race, religion,
14 sex, or sexual orientation. For the purposes of receiving ~~OIB ILS OIB~~
15 services, the customer must be blind or have a low vision diagnosis or a
16 significant visual impairment as defined in §853.1; however, that requirement
17 is not considered discrimination against any individual on the basis of
18 disability.

19
20 (b) OIB staff shall ensure the customer or the customer's representative, as
21 appropriate, is notified in an accessible format about the rights included in
22 subsection (a) of this section, and §853.21, relating to Customer Participation
23 in the Cost of Services, when:

- 24
25 (1) the customer applies for services;
26
27 (2) OIB staff determines that a customer is ineligible for services; and
28
29 (3) OIB staff intends to terminate services.

30
31 (c) Filing a complaint with DRTx:

- 32
33 (1) A customer has the right to appeal a determination to the state's CAP.
34 The CAP in Texas is implemented by DRTx.
35
36 (2) DRTx advocates are not employees of the Agency. There are no fees
37 for CAP services, which are provided by advocates and attorneys when
38 necessary. Services are confidential.
39
40 (3) A customer who is enrolled in OIB services ~~ILS OIB~~, or the customer's
41 representative, may file a complaint with DRTx alleging that a
42 requirement of ~~OIB ILS OIB~~ was violated. The complaint does not need
43 to be filed with OIB ~~ILS OIB~~.