

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

3  
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5                   **INDIVIDUALS WHO ARE BLIND**

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4                   **SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER**  
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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 Division for Rehabilitation Services rules, the  
11                  following words and terms, when used in this chapter, shall have the following  
12                  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 (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 ILS-OIB  
2 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 ILS-OIB services.  
7
- 8 (11) Customer representative--Any individual chosen by a customer,  
9 including the customer's parent, guardian, other family member, or  
10 advocate. If a court has appointed a guardian or representative, that  
11 individual is the customer's representative.  
12
- 13 (12) Federal Poverty Guidelines--The poverty guidelines updated  
14 periodically in the *Federal Register* by the US Department of Health  
15 and Human Services under the authority of 42 USC §9902(2), found at  
16 <https://aspe.hhs.gov/poverty-guidelines>.  
17
- 18 (13) Independent Living Plan (ILP)--A written plan in which the customer  
19 and OIB staff have collaboratively identified the services that the  
20 customer needs to achieve the goal of living independently.  
21
- 22 (14) Low vision--A condition of having a visual acuity not more than 20/70  
23 in the better eye with correcting lenses, or visual acuity greater than  
24 20/70 but with a limitation in the field of vision such that the widest  
25 diameter of the visual field subtends an angle no greater than 30  
26 degrees, or having a combination of both.  
27
- 28 (15) Significant disability--A significant physical, mental, cognitive, or  
29 sensory impairment that substantially limits an individual's ability to  
30 function independently in the family or community.  
31
- 32 (16) Transition services--Services that:  
33
- 34 (A) facilitate the transition of individuals with significant disabilities  
35 from nursing homes and other institutions to home and  
36 community-based residences, with the requisite supports and  
37 services; and  
38
- 39 (B) provide assistance to individuals with significant disabilities who  
40 are at risk of entering institutions so that the individuals may  
41 remain in the community.  
42

43 *The provisions of this §853.1 adopted to be effective August 21, 2018, 43 TexReg*  
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46

1           **§853.2. Referral.**

- 2
- 3           (a) An individual may be referred for ILS-OIB services by a variety of
- 4                 organizations, including, but not limited to:
- 5
- 6                 (1) a physician's office;
- 7
- 8                 (2) a community organization;
- 9
- 10                (3) the Center for Independent Living (CIL);
- 11
- 12                (4) a senior community organization; or
- 13
- 14                (5) family, customer representative, and friends.
- 15
- 16           (b) A referral shall include the name of the individual seeking services, the
- 17                 address where the individual resides, and an e-mail address and telephone
- 18                 number, if available.
- 19
- 20           (c) During the referral process, OIB staff shall verify the eligibility criteria,
- 21                 determine the level of services needed by the customer, and provide minimal
- 22                 services, which can include information and referral guide, bump dots for
- 23                 kitchen appliances, and magnifiers. If minimal services are all that a customer
- 24                 requires, the case can be closed as a referral only.
- 25
- 26           (d) For service delivery to begin, an individual shall submit a complete
- 27                 application and document that all eligibility requirements are met.
- 28

29           *The provisions of this §853.2 adopted to be effective August 21, 2018, 43 TexReg*

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33

34           **§853.3. Accessible Communication.**

35

- 36           (a) The Agency shall provide all members of the public with disabilities who are
- 37                 seeking information or other services from the Agency access to and use of
- 38                 electronic and information resources comparable to the access and use
- 39                 provided to members of the public without disabilities, unless compliance
- 40                 with this section imposes a significant difficulty or expense to the Agency
- 41                 under Texas Government Code §2054.460.
- 42
- 43           (b) The Agency may use alternate methods or formats to provide timely access
- 44                 by individuals with disabilities to Agency electronic and information
- 45                 resources.
- 46

- 1 (c) The Agency shall ensure that ILS-OIB applicants and customers are given  
2 the opportunity to request and receive communication from the Agency in an  
3 alternate format or by alternate methods.  
4

5 *The provisions of this §853.3 adopted to be effective August 21, 2018, 43 TexReg*  
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10 **§853.4. Application.**

11  
12 An individual is considered to have submitted an application when the individual  
13 or the individual's representative, as appropriate:

- 14  
15 (1) has completed and signed--including entry of electronic PIN--the ILS-  
16 OIB application form;  
17  
18 (2) has provided the information necessary to initiate an assessment to  
19 determine eligibility and service delivery; and  
20  
21 (3) is available to complete the assessment process to determine eligibility.  
22

23 *The provisions of this §853.4 adopted to be effective August 21, 2018, 43 TexReg*  
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27

28 **§853.5. Eligibility.**

- 29  
30 (a) To be eligible for ILS-OIB, a customer must:  
31  
32 (1) be age 55 or older;  
33  
34 (2) be blind or have low vision as defined in §853.1, relating to  
35 Definitions;  
36  
37 (3) be an individual for whom independent living goals are feasible; and  
38  
39 (4) be present in Texas.  
40  
41 (b) Eligibility for blindness or low vision is determined by OIB staff based on  
42 the documented diagnosis of a licensed practitioner.  
43  
44 (c) Individuals shall establish eligibility through existing data and information,  
45 including, but not limited to, medical records and information used by the  
46 Social Security Administration. The information may be obtained from the

1 applicant, the applicant's family members, or the applicant's representative.  
2 OIB staff may assist in locating or obtaining existing documentation.

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

25

26 *The provisions of this §853.5 adopted to be effective August 21, 2018, 43 TexReg*  
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30

31 **§853.6. Ineligibility Determination.**

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

- 1 (1) A brief statement of the ineligibility determination, with reference to  
2 the requirements under this chapter and any deficiencies;
- 3
- 4 (2) The mailing date of the determination;
- 5
- 6 (3) An explanation of the individual's right to an appeal;
- 7
- 8 (4) The procedures for filing an appeal with the Agency, including  
9 applicable time frames;
- 10
- 11 (5) The right to have a hearing representative, including legal counsel;
- 12
- 13 (6) How to contact the Texas CAP, which is DRTx; and
- 14
- 15 (7) The address or fax number to which the appeal must be sent.
- 16
- 17 (c) When appropriate, OIB staff may refer the applicant to other agencies and  
18 facilities.
- 19

20 *The provisions of this §853.6 adopted to be effective August 21, 2018, 43 TexReg*  
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## 24 25 **SUBCHAPTER B. SERVICES**

### 26 27 **§853.10. Independent Living Plan.**

- 28
- 29 (a) Once an individual is determined eligible, the ILP is developed and agreed to  
30 within 90 days from the date of notification of eligibility, unless an alternate  
31 date is agreed to by the customer or the customer's representative, as  
32 appropriate.
- 33
- 34 (b) OIB staff must jointly develop the ILP and all subsequent amendments in  
35 writing, through consultation with the customer or the customer's  
36 representative, as appropriate.
- 37
- 38 (c) A customer may waive receipt of the written plan by signing the Agency  
39 Waiver of Independent Living Plan (DARS 5154).
- 40
- 41 (d) Through consultation, OIB staff and the customer, or the customer's  
42 representative, as appropriate, determine how services shall be delivered and  
43 document service delivery methods in the electronic record of the ILP, which  
44 OIB staff must maintain.
- 45

- 1 (e) The Agency shall ensure that the customer or the customer's representative,  
2 as appropriate, is advised of procedures and requirements affecting the  
3 development and review of the ILP.  
4
- 5 (f) To receive a copy of the ILP and its amendments in a medium other than  
6 print, the customer must inform OIB staff of the preferred medium.  
7
- 8 (g) OIB staff shall review the ILP at least annually with the customer or the  
9 customer's representative, as appropriate, to assess the customer's progress in  
10 meeting the objectives identified in the ILP.  
11
- 12 (h) OIB staff shall incorporate any revisions to the ILP that are necessary to  
13 reflect changes in the customer's goals, intermediate objectives, or needs.  
14
- 15 (i) The customer must inform the Agency in a timely manner of changes that  
16 will affect the provision of services, including, but not limited to, the  
17 customer's unavailability to receive services.  
18

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23  
24 **§853.11. Scope of Services.**

- 25
- 26 (a) All services provided under this section shall be subject to budget constraints  
27 of the program.  
28
- 29 (b) OIB staff shall provide each service in accordance with a customer's ILP.  
30
- 31 (c) OIB staff may directly provide the following services under this chapter:  
32
- 33 (1) Information and referral services;
  - 34 (2) Independent living skills training;
  - 35 (3) Peer counseling (including cross-disability peer counseling);
  - 36 (4) Individual and systems advocacy;
  - 37 (5) Orientation and mobility training;
  - 38 (6) Diabetes education;
  - 39 (7) Braille training; and
  - 40
  - 41
  - 42
  - 43
  - 44
  - 45
  - 46

1 (8) Transition services.  
2

3 (d) OIB staff may purchase goods or services with an approved provider as  
4 identified and agreed upon with the customer in the ILP, including:  
5

6 (1) counseling services, to include psychological and psychotherapeutic  
7 services;  
8

9 (2) orientation and mobility training;  
10

11 (3) diabetes awareness training;  
12

13 (4) rehabilitation technology (for example, a video magnifier); and  
14

15 (5) related visual aid tools, such as magnifiers and low vision eyeglasses.  
16

17 (e) OIB staff may refer customers to other services to meet their needs. Such  
18 other services may include, but are not limited to:  
19

20 (1) CIL services;  
21

22 (2) housing services, including supportive living;  
23

24 (3) accessible transportation services;  
25

26 (4) medical services;  
27

28 (5) personal assistance services, including attendant care and the  
29 training of individuals to provide such services;  
30

31 (6) education and training necessary for living in a community and  
32 participating in community activities; and  
33

34 (7) social and recreational services.  
35

36 *The provisions of this §853.11 adopted to be effective August 21, 2018, 43 TexReg*  
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40

## 41 SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

### 42 **§853.20. Individuals Who Receive Social Security Income or Social Security** 43 **Disability Insurance.** 44 45

- 1 (a) Customers who are recipients of either Social Security Income (SSI) or  
2 Social Security Disability Insurance (SSDI) are not required to participate in  
3 the cost of services.  
4
- 5 (b) OIB staff shall ensure that each customer or the customer's representative, as  
6 appropriate, is informed of the services that require customer participation in  
7 the cost of services and the services that do not require customer  
8 participation.  
9

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14  
15 **§853.21. Customer Participation in the Cost of Services.**

- 16
- 17 (a) The following independent living services, as defined in §853.11, relating to  
18 Scope of Services, are subject to customer participation in cost of service:  
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 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 in §853.11 of this chapter  
30 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 a customer participation  
41 agreement acknowledging the amount of the customer's fee for services and  
42 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 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 a new customer participation agreement.  
16
- 17 (i) When the customer signs a new participation agreement, the new amount of  
18 the customer's fee for service takes effect the beginning of the following  
19 month. The new amount shall not be applied retroactively.  
20
- 21 (j) OIB staff shall develop a process to reconsider and adjust the customer's fee  
22 for services based on circumstances that are both extraordinary and  
23 documented. This may include assessing the customer's ability to pay the  
24 customer's participation amount. Extraordinary circumstances include:  
25
- 26 (1) an increase or decrease in income;  
27
- 28 (2) unexpected medical expenses;  
29
- 30 (3) unanticipated disability-related expenses;  
31
- 32 (4) a change in family size;  
33
- 34 (5) catastrophic loss, such as fire, flood, or tornado;  
35
- 36 (6) short-term financial hardship, such as a major repair to the customer's  
37 home or personally owned vehicle; or  
38
- 39 (7) other extenuating circumstances for which the customer makes a  
40 request and provides supporting documentation.  
41
- 42 (k) The customer's calculated fee for services remains in effect during the  
43 reconsideration and adjustment process.  
44
- 45 (l) OIB staff shall:  
46

1 (1) use program income that is received from the customer participation  
2 system only to provide services outlined in §853.11; and

3  
4 (2) report fees collected as program income.

5  
6 (m) The Agency may not use program income received from the customer  
7 participation system to supplant any other fund sources.

8  
9 (n) The Agency may not pay any portion of the customer's participation fee.

10  
11 (o) The customer's participation agreement and all financial information  
12 collected by OIB staff are subject to subpoena.

13  
14 *The provisions of this §853.21 adopted to be effective August 21, 2018, 43 TexReg*  
15 *5392*

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18  
19 **§853.22. Availability of Comparable Services and Benefits.**

20  
21 (a) The Agency shall determine whether comparable services or benefits are  
22 available to the customer under any other program and if comparable services  
23 or benefits are available to the customer under any other program, the  
24 customer shall use those benefits first. This includes services that are  
25 included under the customer's medical and dental insurance, including  
26 government insurance.

27  
28 (b) The Agency shall not make this determination in cases in which comparable  
29 services or benefits exist under any other program, but are not available to the  
30 customer at the time needed, and:

31  
32 (1) determining the availability of comparable services and benefits under  
33 any other program would delay the provision of services to customers  
34 who could be at medical risk, based on medical evidence provided by  
35 an appropriate, qualified medical professional; or

36  
37 (2) the determination would interrupt or delay progress toward achieving  
38 the goals in the ILP.

39  
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1 **SUBCHAPTER D. CASE DOCUMENTATION**

2  
3 **§853.30. Case Closure.**

- 4  
5 (a) The Agency closes a case when the customer's ILP has been completed,  
6 typically within 18 months of plan development. The case will be closed  
7 sooner without completion of services if:  
8  
9 (1) the customer does not meet eligibility criteria;  
10  
11 (2) the customer is unavailable, for an extended period of time, to complete  
12 an assessment of independent living needs and staff has made repeated  
13 efforts to contact and encourage the applicant to participate;  
14  
15 (3) the customer has refused services or further services;  
16  
17 (4) the customer is no longer present in Texas;  
18  
19 (5) the customer's whereabouts are unknown;  
20  
21 (6) the customer's medical condition is rapidly progressive or terminal;  
22  
23 (7) the customer has refused to cooperate with the Agency; or  
24  
25 (8) the customer's case has been transferred to another agency.  
26  
27 (b) A customer or the customer's representative, as appropriate, shall be notified  
28 of any case closure except when the customer's whereabouts are unknown.  
29  
30 (c) Pocast-closure services shall not normally exceed six months.

31  
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36  
37 **SUBCHAPTER E. CUSTOMERS' RIGHTS**

38  
39 **§853.40. Rights of Customers.**

- 40  
41 (a) In accordance with applicable legal provisions, the Agency does not, directly  
42 or through contractual or other arrangements, exclude, deny benefits to, limit  
43 the participation of, or otherwise discriminate against any individual on the  
44 basis of age, color, disability, national origin, political belief, race, religion,  
45 sex, or sexual orientation. For the purposes of receiving ILS-OIB services,  
46 the customer must be blind or have a low vision; however, that requirement is

1 not considered discrimination against any individual on the basis of  
2 disability.

3  
4 (b) OIB staff shall ensure the customer or the customer's representative, as  
5 appropriate, is notified in an accessible format about the rights included in  
6 subsection (a) of this section, and §853.21, relating to Customer Participation  
7 in the Cost of Services, when:

- 8  
9 (1) the customer applies for services;  
10  
11 (2) OIB staff determines that a customer is ineligible for services; and  
12  
13 (3) OIB staff intends to terminate services.

14  
15 (c) Filing a complaint with DRTx:

- 16  
17 (1) A customer has the right to appeal a determination to the state's CAP.  
18 The CAP in Texas is implemented by DRTx.  
19  
20 (2) DRTx advocates are not employees of the Agency. There are no fees  
21 for CAP services, which are provided by advocates and attorneys when  
22 necessary. Services are confidential.  
23  
24 (3) A customer who is enrolled in ILS-OIB, or the customer's  
25 representative, may file a complaint with DRTx alleging that a  
26 requirement of ILS-OIB was violated. The complaint does not need to  
27 be filed with ILS-OIB.  
28

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33  
34 **§853.41. Right to Appeal.**

35  
36 A customer has the right to appeal, as set forth in Chapter 850 of this title, relating  
37 to Vocational Rehabilitation Services Administrative Rules and Procedures.

38  
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