

1 **CHAPTER 854. DIVISION FOR BLIND SERVICES**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE TEXAS REGISTER.**
6

7 **ON AUGUST 8, 2017, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS REGISTER.**

9
10 Estimated Publication Date of the Proposal in the *Texas Register*: **August 25, 2017**
11 Estimated End of Comment Period: **September 25, 2017**
12

13 The Texas Workforce Commission (TWC) proposes the repeal of the following sections of
14 Chapter 854, relating to the Division for Blind Services:
15

16 Subchapter B. Vocational Rehabilitation Program, §§854.20 - 854.28, 854.40 - 854.53,
17 854.60 - 854.62, 854.70, 854.80, 854.90 - 854.94
18

- 19 PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- 20 PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- 21 PART III. IMPACT STATEMENTS
- 22 PART IV. COORDINATION ACTIVITIES
23

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

25 The purpose of the proposed Chapter 854 rule change is to comply with Texas Labor Code
26 §352.101, which requires TWC to integrate the two Vocational Rehabilitation (VR) programs--
27 VR for individuals with visual impairments (Blind Services) and VR for individuals with other
28 disabilities (Rehabilitation Services)--into one program. Section 352.101(b)(5) specifically
29 requires TWC to recommend the adoption of any rules necessary to accomplish this integration
30 by October 1, 2017.
31

32 Currently, VR program rules for Blind Services are located in Chapter 854, Subchapter B, and
33 VR program rules for Rehabilitation Services are located in Chapter 856. These chapters must be
34 consolidated to create a unified rule base for TWC's VR program. Many sections in both
35 chapters contain the same or similar language. However, some significant differences exist
36 between the two chapters, and those differences must be resolved to integrate the two rule sets--
37 and programs--into one.
38

39 TWC proposes repealing Chapter 854, Subchapter B. In a separate, but concurrent, rulemaking
40 proposal, TWC proposes revising Chapter 856 to contain all rules for the integrated VR program.
41 Existing rule provisions that are unique to VR services for individuals with visual impairments in
42 Chapter 854, Subchapter B, would be incorporated into Chapter 856 and expanded to apply to all
43 VR customers or retained to ensure the specialization of blind services, as appropriate. Where
44 there are differences between the two rule chapters, TWC proposes incorporating into Chapter
45 856 the version of the language from either chapter that is most representative of best practices in
46 the VR program.

1
2 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

3
4 **SUBCHAPTER B. VOCATIONAL REHABILITATION PROGRAM**

5 **TWC proposes the repeal of Subchapter B in its entirety:**

6
7 **SUBCHAPTER B. DIVISION 1: PROGRAM AND SUBCHAPTER PURPOSE**

8
9 **§854.20. Purpose**

10 Section 854.20 is repealed because similar provisions exist in §856.1. A separate provision
11 stating that the purpose of the VR program is to provide services to individuals with visual
12 impairments is not necessary under the combined VR program, which will provide services to
13 individuals with all types of disabilities.

14
15 **§854.21. Legal Authority**

16 Section 854.21 is repealed because similar provisions exist in §856.2 and a separate section for
17 Blind Services is no longer necessary.

18
19 **§854.22. Definitions**

20 Section 854.22 is repealed because similar provisions exist in §856.3 and a separate section for
21 Blind Services is no longer necessary. Two definitions in §854.22--(2) “Blind (person who is)”
22 and (4) “Visual impairment”--are included in proposed amendments to Chapter 856, a separate,
23 but concurrent, rulemaking proposal to integrate VR program rules.

24
25 **SUBCHAPTER B. DIVISION 2: ELIGIBILITY**

26
27 **§854.23. Application**

28 Section 854.23 is repealed because applicable contents of this section are included in proposed
29 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
30 program rules.

31
32 **§854.24. Eligibility**

33 Section 854.24 is repealed because similar provisions exist in §856.20 and a separate section for
34 Blind Services is no longer necessary.

35
36 **§854.25. Prohibited Factors**

37 Section 854.25 is repealed because similar provisions exist in §856.21 and a separate section for
38 Blind Services is no longer necessary.

39
40 **§854.26. Eligibility Determination Time Frame**

41 Section 854.26 is repealed because the contents of this section are included in proposed
42 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
43 program rules.

44
45 **§854.27. Determination of Ineligibility**

1 Section 854.27 is repealed because similar provisions exist in §856.23 and a separate section for
2 Blind Services is no longer necessary.

3
4 **§854.28. Case Closure**

5 Section 854.28 is repealed because similar provisions exist in §856.24 and a separate section for
6 Blind Services is no longer necessary.

7
8 **SUBCHAPTER B. DIVISION 3: PROVISION OF VOCATIONAL REHABILITATION**
9 **SERVICES**

10
11 **§854.40. Provision of Services**

12 Section 854.40 is repealed because similar provisions exist in §856.40 and a separate section for
13 Blind Services is no longer necessary.

14
15 **§854.41. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and**
16 **Rehabilitation Technology Needs**

17 Section 854.41 is repealed because similar provisions exist in §856.41 and a separate section for
18 Blind Services is no longer necessary.

19
20 **§854.42. Physical and Mental Restoration Services**

21 Section 854.42 is repealed because similar provisions exist in §856.43 and §856.44 and a
22 separate section for Blind Services is no longer necessary.

23
24 **§854.43. Vocational and Other Training Services**

25 Section 854.43 is repealed because applicable contents of this section are included in proposed
26 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
27 program rules.

28
29 **§854.44. Maintenance**

30 Section 854.44 is repealed because similar provisions exist in §856.46 and a separate section for
31 Blind Services is no longer necessary.

32
33 **§854.45. Transportation**

34 Section 854.45 is repealed because similar provisions exist in §856.47 and a separate section for
35 Blind Services is no longer necessary.

36
37 **§854.46. Services to Family Members**

38 Section 854.46 is repealed because the contents of this section are included in proposed
39 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
40 program rules.

41
42 **§854.47. Interpreter Services and Note-Taking Services for Consumers Who Are Deaf and**
43 **Tactile Interpreting for Consumers Who Are Deafblind**

44 Section 854.47 is repealed because the contents of this section are included in proposed
45 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
46 program rules.

1
2 **§854.48. Reader Services and Rehabilitation Teaching Services**

3 Section 854.48 is repealed because the contents of this section are included in proposed
4 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
5 program rules.

6
7 **§854.49. Employment Assistance**

8 Section 854.49 is repealed because similar provisions exist in §856.49 and a separate section for
9 Blind Services is no longer necessary.

10
11 **§854.50. Post-Employment Services**

12 Section 854.50 is repealed because similar provisions exist in §856.50 and because applicable
13 contents of this section are included in proposed amendments to Chapter 856, a separate, but
14 concurrent, rulemaking proposal to integrate VR program rules.

15
16 **§854.51. Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies**

17 Section 854.51 is repealed because similar provisions exist in §856.51 and because applicable
18 contents of this section are included in proposed amendments to Chapter 856, a separate, but
19 concurrent, rulemaking proposal to integrate VR program rules.

20
21 **§854.52. Assistive Technology Devices**

22 Section 854.52 is repealed because the contents of this section are included in proposed
23 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
24 program rules.

25
26 **§854.53. Individualized Plan for Employment (IPE)**

27 Section 854.53 is repealed because similar provisions exist in §856.52 and because applicable
28 contents of this section are included in proposed amendments to Chapter 856, a separate, but
29 concurrent, rulemaking proposal to integrate VR program rules.

30
31 **SUBCHAPTER B. DIVISION 4: CONSUMER PARTICIPATION**

32
33 **§854.60. Purpose of Consumer Participation**

34 Section 854.60 is repealed because the contents of this section are included in proposed
35 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
36 program rules.

37
38 **§854.61. Scope of Consumer Participation**

39 Section 854.61 is repealed because similar provisions exist in §856.60 and because applicable
40 contents of this section are included in proposed amendments to Chapter 856, a separate, but
41 concurrent, rulemaking proposal to integrate VR program rules.

42
43 **§854.62. Refusal to Disclose Economic Resources**

44 Section 854.62 is repealed because similar provisions exist in §856.60.

45
46 **SUBCHAPTER B. DIVISION 5: COMPARABLE BENEFITS**

1
2 **§854.70. Comparable Services and Benefits**

3 Section 854.70 is repealed because the contents of this section are included in proposed
4 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
5 program rules.

6
7 **SUBCHAPTER B. DIVISION 6: METHODS OF ADMINISTRATION OF**
8 **VOCATIONAL REHABILITATION**

9
10 **§854.80. Application of an Order of Selection**

11 Section 854.80 is repealed because similar provisions exist in §856.82 and because applicable
12 contents of this section are included in proposed amendments to Chapter 856, a separate, but
13 concurrent, rulemaking proposal to integrate VR program rules.

14
15 **SUBCHAPTER B. DIVISION 7: CERTIFICATE OF BLINDNESS FOR TUITION**
16 **WAIVER**

17
18 **§854.90. Purpose**

19 Section 854.90 is repealed because the contents of this section are included in proposed
20 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
21 program rules.

22
23 **§854.91. Legal Authority**

24 Section 854.91 is repealed because the contents of this section are included in proposed
25 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
26 program rules.

27
28 **§854.92. Definitions**

29 Section 854.92 is repealed because the contents of this section are included in proposed
30 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
31 program rules.

32
33 **§854.93. Eligibility**

34 Section 854.93 is repealed because the contents of this section are included in proposed
35 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
36 program rules.

37
38 **§854.94. Certificate of Blindness for Tuition Waiver**

39 Section 854.94 is repealed because the contents of this section are included in proposed
40 amendments to Chapter 856, a separate, but concurrent, rulemaking proposal to integrate VR
41 program rules.

42
43
44 **PART III. IMPACT STATEMENTS**

45 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
46 years the rules will be in effect, the following statements will apply:

1
2 There are no additional estimated costs to the state and to local governments expected as a result
3 of enforcing or administering the rules.

4
5 There are no estimated cost reductions to the state and to local governments as a result of
6 enforcing or administering the rules.

7
8 There are no estimated losses or increases in revenue to the state or to local governments as a
9 result of enforcing or administering the rules.

10
11 There are no foreseeable implications relating to costs or revenue of the state or local
12 governments as a result of enforcing or administering the rules.

13
14 There are no anticipated economic costs to persons required to comply with the rules.

15
16 There is no anticipated adverse economic impact on small or microbusinesses as a result of
17 enforcing or administering the rules.

18
19 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
20 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
21 Legislature, Regular Session, 2017 (to be codified at Texas Government Code §2001.0045), does
22 not apply to this rulemaking. Additionally, Texas Labor Code §352.101 requires TWC's three-
23 member Commission to adopt rules necessary to integrate the vocational rehabilitation programs,
24 including recommending adopting rules to implement the integration. Therefore, the exception
25 identified in §2001.0045(c)(9) also applies.

26
27 Economic Impact Statement and Regulatory Flexibility Analysis

28 TWC has determined that the proposed rules will not have an adverse economic impact on small
29 businesses because these proposed rules place no requirements on small businesses.

30
31 Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no
32 significant negative impact upon employment conditions in the state as a result of the rules.

33
34 Reagan Miller, Deputy Director, Workforce Solutions, has determined that for each year of the
35 first five years the rules are in effect, the public benefit anticipated as a result of enforcing the
36 proposed rules will be to comply with statutory requirements, unify and clarify rule language,
37 update terminology, and improve consistency within the VR program.

38
39 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
40 within TWC's legal authority to adopt.

41
42 **PART IV. COORDINATION ACTIVITIES**

43 In the development of these rules for publication and public comment, TWC sought the
44 involvement of Texas' 28 Boards and the Rehabilitation Council of Texas (RCT). TWC provided
45 the concept paper regarding these rule amendments to the Boards and RCT's Policy Committee
46 for consideration and review on June 13, 2017. TWC also conducted conference calls with Board

1 executive directors and Board staff on June 23, 2017, and with RCT's Policy Committee on June
2 20 and June 27, 2017, to discuss the concept paper. During the rulemaking process, TWC
3 considered all information gathered in order to develop rules that provide clear and concise
4 direction to all parties involved.

5
6 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
7 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin,
8 Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us.
9 Comments must be received or postmarked no later than 30 days from the date this proposal is
10 published in the *Texas Register*.

11
12 The rules are proposed under Texas Labor Code §352.101, which requires TWC to adopt rules as
13 necessary to integrate the vocational rehabilitation programs, and §301.0015 and §302.002(d),
14 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems
15 necessary for the effective administration of TWC services and activities.

16
17 The proposed rules affect Title 4, Texas Labor Code, Chapters 301, 302, and 352.
18
19
20
21

1 ~~(3) Consumer—An individual with a disability who has applied for, or who is~~
2 ~~receiving vocational rehabilitation services.~~

3
4 ~~(4) Visual impairment—A visual acuity, with best correction, of 20/70 or less in the~~
5 ~~better eye; or a visual field of 30 degrees or less in the better eye; or a~~
6 ~~combination of both.~~

7
8 **SUBCHAPTER B. DIVISION 2: ELIGIBILITY**

9
10 **§854.23. Application.**

11
12 ~~(a) A person is considered to have submitted an application when the person or the~~
13 ~~person's representative, as appropriate:~~

14
15 ~~(1) has completed and signed the DBS application form or has otherwise requested~~
16 ~~services;~~

17
18 ~~(2) has provided information necessary to initiate an assessment to determine~~
19 ~~eligibility and priority for services; and~~

20
21 ~~(3) is available to complete the assessment process.~~

22
23 ~~(b) Persons residing in institutions, such as state hospitals or prisons, may apply for~~
24 ~~services when their release is expected within 60 days.~~

25
26 **§854.24. Eligibility.**

27
28 ~~(a) To establish an applicant's eligibility for vocational rehabilitation services, DBS must:~~

29
30 ~~(1) determine that the applicant has a visual impairment;~~

31
32 ~~(2) determine that the applicant's visual impairment constitutes or results in a~~
33 ~~substantial impediment to employment for the applicant;~~

34
35 ~~(3) establish that the applicant requires vocational rehabilitation (VR) services to~~
36 ~~prepare for, enter, engage in, or retain gainful employment consistent with the~~
37 ~~applicant's strengths, resources, priorities, concerns, abilities, capabilities,~~
38 ~~interests, and informed choice; and~~

39
40 ~~(4) presume that the applicant is capable of achieving an employment outcome,~~
41 ~~unless there is a demonstration by clear and convincing evidence that the~~
42 ~~applicant is incapable of achieving an employment outcome because of the~~
43 ~~severity of the applicant's disability.~~

44
45 ~~(b) When DBS has received appropriate evidence that the applicant is eligible for benefits~~
46 ~~under Titles II or XVI of the Social Security Act because of blindness and the~~

1 applicant has indicated a willingness to work, DBS presumes that the applicant meets
2 the basic eligibility requirements in subsection (a) of this section.
3

4 **§854.25. Prohibited Factors.**
5

6 (a) ~~DBS does not impose, as part of determining eligibility under this subchapter, a~~
7 ~~duration of residence requirement that excludes from services any applicant who is~~
8 ~~present in the state.~~
9

10 (b) ~~In determining eligibility under this subchapter, DBS ensures that:~~
11

12 (1) ~~No applicant or group of applicants is excluded or found ineligible solely on the~~
13 ~~basis of the type of disability; and~~
14

15 (2) ~~The eligibility requirements are applied without regard to the:~~
16

17 (A) ~~age, gender, race, color, or national origin of the applicant;~~
18

19 (B) ~~type of expected employment outcome;~~
20

21 (C) ~~source of referral for vocational rehabilitation services; and~~
22

23 (D) ~~particular service needs or anticipated cost of services required by an~~
24 ~~applicant or the income level of an applicant or applicant's family.~~
25

26 **§854.26. Eligibility Determination Time Frame.**
27

28 (a) ~~Eligibility or ineligibility must be determined no later than 60 days after the applicant,~~
29 ~~or the applicant's representative, as appropriate, has signed and submitted an~~
30 ~~application for vocational rehabilitation services in accordance with provisions of~~
31 ~~§106.307 of this subchapter (relating to Application).~~
32

33 (b) ~~Exceptions to the 60-day time frame for determining eligibility or ineligibility may~~
34 ~~occur only when:~~
35

36 (1) ~~DBS notifies the applicant that unforeseen circumstances beyond the control of~~
37 ~~DBS preclude it from completing the determination in 60 days; and~~
38

39 (2) ~~the applicant, or the applicant's representative, as appropriate, agrees to a~~
40 ~~specific extension of time; or~~
41

42 (3) ~~DBS is exploring an applicant's abilities, capabilities, and capacity to perform in~~
43 ~~work situations.~~
44

1 ~~(e) Eligibility must be determined before applying Division 6 of this subchapter, if~~
2 ~~appropriate (relating to Methods of Administration of Vocational Rehabilitation) and~~
3 ~~Division 4 of this subchapter (relating to Consumer Participation).~~

4
5 **~~§854.27. Determination of Ineligibility.~~**

6
7 ~~(a) If an individual who applies for services is determined not to be eligible for the~~
8 ~~services or if an eligible individual receiving services under an individualized plan~~
9 ~~for employment is determined to be no longer eligible for the services then:~~

10
11 ~~(1) DBS must make a determination of ineligibility only after providing an~~
12 ~~opportunity for full consultation with the individual, or as appropriate, with the~~
13 ~~individual's representative.~~

14
15 ~~(2) DBS must inform the individual in writing of the ineligibility determination. The~~
16 ~~written determination must be supplemented by special modes of~~
17 ~~communication consistent with the informed choice of the individual, if~~
18 ~~necessary, and must include the reasons for the determination, the~~
19 ~~requirements under this chapter, and the means by which the individual may~~
20 ~~express and seek remedy for any dissatisfaction, including the procedures for~~
21 ~~review of a determination by the counselor.~~

22
23 ~~(3) DBS shall provide the individual with a description of services available from~~
24 ~~the client assistance program established under 34 CFR Part 370 and~~
25 ~~information on how to contact that program.~~

26
27 ~~(b) DBS reviews any ineligibility determination based on a finding that the individual is~~
28 ~~incapable of achieving an employment outcome. The review must occur within 12~~
29 ~~months, and annually thereafter if requested by the individual or the individual's~~
30 ~~representative, unless the individual has refused the review, the individual is no~~
31 ~~longer present in Texas, the individual's whereabouts are unknown, or the~~
32 ~~individual's medical condition is rapidly progressive or terminal.~~

33
34 **~~§854.28. Case Closure.~~**

35
36 ~~DBS closes a case when the consumer's rehabilitation plan has been completed, and the~~
37 ~~consumer has achieved and maintained continuous employment commensurate with the~~
38 ~~established employment goal for a minimum of 90 days. DBS closes the case sooner if:~~

39
40 ~~(1) DBS is unable to locate or contact the person;~~

41
42 ~~(2) the person's disability is so severely limiting that there is little chance the person~~
43 ~~can be vocationally rehabilitated or the person's medical condition is expected~~
44 ~~to progress to such a severely limiting degree in a fairly short period of time~~
45 ~~that rehabilitation services will be of little or no help;~~

- ~~(3) the person has refused services or further services;~~
- ~~(4) the person has died;~~
- ~~(5) the person has been institutionalized;~~
- ~~(6) the person has been determined to have no disabling condition;~~
- ~~(7) the person has refused to cooperate with DBS;~~
- ~~(8) transportation is not feasible or available;~~
- ~~(9) the person has been determined to have no impediment to employment;~~
- ~~(10) extended services for supported employment are not available;~~
- ~~(11) the person has chosen extended employment (for example, sheltered workshop);~~
~~or~~
- ~~(12) the person's case has been transferred to another agency.~~

SUBCHAPTER B. DIVISION 3: PROVISION OF VOCATIONAL REHABILITATION SERVICES

§854.40. Provision of Services.

- ~~(a) DBS, as appropriate to the vocational rehabilitation needs of each eligible person, provides goods and services necessary to render the consumer employable, subject to certain limitations prescribed in this subchapter and application of Division 4 of this subchapter (relating to Consumer Participation), and Division 5 of this subchapter (relating to Comparable Benefits).~~
- ~~(b) Services are provided only when planned in advance and contained in the consumer's individualized plan of employment (IPE).~~

§854.41. Assessment for Determining Eligibility, Vocational Rehabilitation Needs, and Rehabilitation Technology Needs.

- ~~(a) DBS conducts assessments to determine eligibility, vocational rehabilitation needs, and, if necessary, rehabilitation technology needs for the consumer in order to develop an IPE that is designed to achieve the consumer's vocational goal. The vocational goal must be an employment outcome that is consistent with the consumer's unique strengths, resources, priorities, concerns, abilities, capabilities, and career interests.~~

1 ~~(b) If more information is needed to prepare an IPE, DBS conducts a comprehensive~~
2 ~~assessment of the consumer's unique strengths, resources, priorities, interests, and~~
3 ~~needs, including the need for supported employment services, in the most integrated~~
4 ~~setting possible, consistent with the informed choice of the consumer.~~

5
6 ~~(c) A comprehensive assessment is limited to information that is necessary to identify the~~
7 ~~rehabilitation needs and to develop the rehabilitation program for the consumer.~~

8
9 **~~§854.42. Physical and Mental Restoration Services.~~**

10
11 ~~DBS provides physical and mental restoration services that are necessary to correct or~~
12 ~~substantially modify the consumer's physical or mental condition within a reasonable~~
13 ~~period. The conditions for which the services are rendered must be stable or slowly~~
14 ~~progressive.~~

15
16 **~~§854.43. Vocational and Other Training Services.~~**

17
18 ~~(a) All equipment purchased by DBS for training remains the property of DBS.~~

19
20 ~~(b) Academic training in institutions of higher education (universities, colleges,~~
21 ~~community or junior colleges, vocational schools, technical institutes, or hospital~~
22 ~~schools of nursing) is subject to the following:~~

23
24 ~~(1) Academic training in vocational schools and technical institutes must be~~
25 ~~provided only in schools that are certified by the State of Texas.~~

26
27 ~~(2) No vocational rehabilitation funds may be used to pay for academic training~~
28 ~~unless DBS and the consumer have made maximum efforts to secure grant~~
29 ~~assistance in whole or in part from other sources to pay for the training.~~

30
31 ~~(3) The consumer must contact the college or university and apply for any available~~
32 ~~financial aid.~~

33
34 ~~(4) The PELL grant, like any other comparable services and benefits, must be~~
35 ~~applied to the educational process before the expenditure of DBS funds for~~
36 ~~services under this section. Services must not be denied pending receipt of a~~
37 ~~PELL grant, but must be contingent upon the consumer's making application if~~
38 ~~eligible.~~

39
40 ~~(5) Academic training must be provided through public, tax-supported colleges and~~
41 ~~universities in Texas unless:~~

42
43 ~~(A) a specific curriculum related to the consumer's academic major is not~~
44 ~~available at a Texas public institution;~~

45
46 ~~(B) academic training elsewhere is determined to be more economical; or~~

1
2 ~~(C) academic training elsewhere provides specialized services needed by the~~
3 ~~consumer, such as services provided at Gallaudet University for students~~
4 ~~who are deaf.~~

5
6 ~~(6) If the consumer chooses to obtain academic training at a private university or~~
7 ~~outside Texas and the provisions in paragraph (5) of this subsection do not~~
8 ~~apply, academic support must be limited to that which the consumer would~~
9 ~~receive if he or she attended a state supported college or university in Texas.~~

10
11 ~~(7) A consumer who is blind, does not meet the residency requirements of a~~
12 ~~particular institution, and is not eligible for tuition exemption under the~~
13 ~~Education Code, §54.364 may receive tuition assistance from DBS based on~~
14 ~~economic need of the consumer, but the payments must not exceed the tuition~~
15 ~~paid for a student who does meet the residency requirements.~~

16
17 ~~(8) Tuition and fee exemption is an exemption from payment of tuition and/or~~
18 ~~required fees normally charged by a state supported college or university.~~
19 ~~Required fees include student services, building use, health center, lab fees,~~
20 ~~and property deposits not reimbursable to the student. Required fees do not~~
21 ~~include optional fees.~~

22
23 ~~(9) Any equipment purchased for the consumer during academic training must be~~
24 ~~needed by the consumer to help maintain academic success so the vocational~~
25 ~~goal can be met.~~

26
27 ~~(10) Academic training does not include continuing education required for~~
28 ~~maintaining certification in a field in which the consumer is already gainfully~~
29 ~~employed.~~

30
31 ~~(11) Once admitted to academic training:~~

32
33 ~~(A) the consumer must maintain and complete a full time course load as~~
34 ~~defined by the college or university. This requirement may be waived if:~~

35
36 ~~(i) the consumer is a graduating senior;~~

37
38 ~~(ii) the consumer is an incoming freshman (first two semesters or~~
39 ~~quarters);~~

40
41 ~~(iii) the consumer is a returning adult (first academic year only);~~

42
43 ~~(iv) the consumer is in summer school; or~~

44
45 ~~(v) other extenuating circumstances prevent the consumer from~~
46 ~~participating in a full time course load; and~~

1
2 ~~(B) the consumer is required to meet with the counselor at least once each~~
3 ~~semester, to submit add or drop slips as changes occur, and to provide~~
4 ~~grade slips or transcripts to the counselor at the end of each semester.~~
5

6 **~~§854.44. Maintenance.~~**
7

8 ~~DBS may pay maintenance to the consumer. Maintenance is a payment to the consumer~~
9 ~~made during any stage of the rehabilitation process to cover basic living expenses, such~~
10 ~~as food, shelter, clothing, and other subsistence expenses that are in excess of the normal~~
11 ~~expenses of the consumer, and are necessary for the consumer to derive the full benefit of~~
12 ~~other vocational rehabilitation services.~~
13

14 **~~§854.45. Transportation.~~**
15

16 ~~DBS may pay for transportation services for the consumer in connection with other~~
17 ~~vocational rehabilitation services.~~
18

19 **~~§854.46. Services to Family Members.~~**
20

21 ~~(a) Vocational rehabilitation services are provided to family members only if without the~~
22 ~~services the applicant or consumer would be unable to begin or to continue the~~
23 ~~rehabilitation program, and the consumer's employment would be unnecessarily~~
24 ~~delayed or could not be achieved.~~
25

26 ~~(b) Only family members whose receipt of services would further the applicant's or~~
27 ~~consumer's vocational adjustment or rehabilitation may receive services.~~
28

29 ~~(c) Family member, for purposes of receiving vocational rehabilitation services in~~
30 ~~accordance with this section, means a person:~~
31

32 ~~(1) who either is a relative or guardian of the applicant or consumer or lives in the~~
33 ~~same household as the applicant or consumer;~~
34

35 ~~(2) who has a substantial interest in the well-being of the applicant or consumer; and~~
36

37 ~~(3) whose receipt of services is necessary to enable the applicant or consumer to~~
38 ~~achieve an employment outcome.~~
39

40 **~~§854.47. Interpreter Services and Note-Taking Services for Consumers Who Are Deaf~~**
41 **~~and Tactile Interpreting for Consumers Who Are Deafblind.~~**
42

43 ~~When delivering interpreter services, note-taking services, or tactile interpreting to~~
44 ~~persons who are deaf or deafblind, DBS uses interpreters, if available, who are certified~~
45 ~~by one of the following:~~
46

1 ~~(1) DARS, Division for Rehabilitation Services, Office for Deaf and Hard of~~
2 ~~Hearing Services; or~~

3
4 ~~(2) The Registry of Interpreters for the Deaf.~~

5
6 ~~**§854.48. Reader Services and Rehabilitation Teaching Services.**~~

7
8 ~~(a) Reader services are available only to consumers who are blind and who are receiving~~
9 ~~vocational or academic training.~~

10
11 ~~(b) The consumer must use all other available reading sources to the greatest extent~~
12 ~~possible before seeking reimbursement from DBS for reader services.~~

13
14 ~~(c) The maximum amount allowed per month for reader services is calculated according~~
15 ~~to the number of semester hours the consumer is taking, whether during a fall,~~
16 ~~spring, or summer semester, and whether the consumer is an undergraduate or~~
17 ~~graduate student. The rate of reimbursement is available from any DBS office during~~
18 ~~business hours.~~

19
20 ~~(d) DBS does not pay for reader services rendered by a member of the consumer's family.~~

21
22 ~~(e) To receive reimbursement for reader services, the consumer must submit the~~
23 ~~information required by DBS on a prescribed form.~~

24
25 ~~**§854.49. Employment Assistance.**~~

26
27 ~~(a) The principal objective of vocational rehabilitation services is a competitive~~
28 ~~employment outcome for the consumer that is consistent with the consumer's~~
29 ~~strengths, resources, priorities, concerns, abilities, capabilities, interests, and~~
30 ~~informed choice.~~

31
32 ~~(b) Employment outcomes include entering or retaining full-time or, if appropriate, part-~~
33 ~~time competitive employment in the integrated labor market; supported employment;~~
34 ~~or any other type of employment in an integrated setting, including self-employment,~~
35 ~~telecommuting, or business ownership.~~

36
37 ~~**§854.50. Post-Employment Services.**~~

38
39 ~~(a) The consumer may be considered for post-employment services if he or she has been~~
40 ~~determined to be rehabilitated, is in need of help in maintaining employment, and has~~
41 ~~an employment-related problem that does not entail a complex rehabilitation effort or~~
42 ~~address a new and distinct substantial impediment to employment.~~

43
44 ~~(b) Post-employment services must be incidental to the original impediment to~~
45 ~~employment, ancillary to the services provided through the consumer's IPE, and~~
46 ~~related to the previously planned vocational goal.~~

1
2 **~~§854.51. Occupational Licenses, Tools, Equipment, and Initial Stocks and Supplies.~~**
3

- 4 ~~(a) DBS may engage in or contract for activities to provide the consumer with~~
5 ~~occupational licenses, including any license, permit, or other written authority that a~~
6 ~~state, city, or other governmental unit requires a person to obtain before entering an~~
7 ~~occupation or self employment.~~
8
9 ~~(b) DBS may provide the consumer with tools, equipment, initial stocks, goods, and~~
10 ~~supplies necessary to enter an occupation or self employment.~~
11
12 ~~(c) The consumer must safeguard and maintain in a serviceable condition tools and~~
13 ~~equipment and must not sell, give away, or otherwise wrongfully dispose of them.~~
14
15 ~~(d) The consumer must sign a prescribed agreement form at the time the consumer~~
16 ~~receives tools and equipment.~~
17
18 ~~(e) The consumer may not sell, give away, or otherwise voluntarily relinquish possession~~
19 ~~of any tools, equipment, or nonconsumable supplies issued to the consumer during~~
20 ~~the rehabilitation process.~~
21

22 **~~§854.52. Assistive Technology Devices.~~**
23

- 24 ~~(a) Assistive technology devices are purchased only after evaluation of the consumer's~~
25 ~~need and the cost. Simple and less expensive alternatives must be considered first.~~
26
27 ~~(b) The consumer must return to DBS any assistive technology device no longer needed~~
28 ~~for training, employment, or pursuit of employment.~~
29

30 **~~§854.53. Individualized Plan for Employment (IPE).~~**
31

- 32 ~~(a) All IPEs must be written on the form prescribed by DBS for this purpose.~~
33
34 ~~(b) DBS advises the consumer or, as appropriate, the consumer's representative, of the~~
35 ~~consumer's options and all DBS procedures and requirements affecting the~~
36 ~~development and review of an IPE, including the availability of special modes of~~
37 ~~communication.~~
38
39 ~~(c) In developing an IPE for a student with a disability who is receiving special education~~
40 ~~services, DBS must consider the student's individualized education program.~~
41
42 ~~(d) The IPE is reviewed with the consumer, or as appropriate, the consumer's~~
43 ~~representative, as often as necessary, but at least once each year, to assess the~~
44 ~~consumer's progress in meeting the objectives identified in the IPE.~~
45

1 ~~(e) All substantive revisions necessary to reflect changes in the consumer's employment~~
2 ~~outcome, specific vocational rehabilitation services, service providers, and the~~
3 ~~methods used to procure services must be incorporated into the consumer's IPE.~~

4
5 ~~(f) The counselor must provide the consumer or, as appropriate, the consumer's~~
6 ~~representative with a copy of the IPE and its amendments, in the mode of~~
7 ~~communication specified by the consumer or representative.~~

8
9 ~~(g) The data used to prepare the IPE must include the information necessary to satisfy~~
10 ~~federal requirements and to adequately document the consumer's plan of services.~~
11 ~~Regardless of the approach selected by the consumer to develop the IPE, the IPE~~
12 ~~must, at a minimum, contain the following mandatory components:~~

13
14 ~~(1) a description of the consumer's specific employment outcome;~~

15
16 ~~(2) a description of the specific vocational rehabilitation services that are needed to~~
17 ~~achieve the employment outcome, including, as appropriate, the provision of~~
18 ~~assistive technology devices and assistive technology services; personal~~
19 ~~assistance services, including training in the management of those services;~~
20 ~~and timelines for initiating the services and for achieving the employment~~
21 ~~outcome;~~

22
23 ~~(3) a description of the entity chosen by the consumer or, as appropriate, the~~
24 ~~consumer's representative, that will provide the vocational rehabilitation~~
25 ~~services, and the methods used to procure the services;~~

26
27 ~~(4) a description of criteria to evaluate progress toward achievement of the~~
28 ~~employment outcome;~~

29
30 ~~(5) the terms and conditions of the IPE, including, as appropriate, information~~
31 ~~describing:~~

32
33 ~~(A) the responsibilities of DBS;~~

34
35 ~~(B) the responsibilities of the consumer, including:~~

36
37 ~~(i) the consumer's responsibilities related to his or her employment~~
38 ~~outcome;~~

39
40 ~~(ii) if applicable, the consumer's participation in paying for the costs of~~
41 ~~the plan;~~

42
43 ~~(iii) the consumer's responsibility to apply for and secure comparable~~
44 ~~benefits; and~~

1 ~~(iv) the responsibilities of other entities resulting from arrangements~~
2 ~~made under comparable services or benefits;~~

3
4 ~~(6) for a consumer with the most significant disabilities for whom an employment~~
5 ~~outcome in a supported employment setting has been determined to be~~
6 ~~appropriate, information identifying:~~

7
8 ~~(A) the extended services needed by the consumer; and~~

9
10 ~~(B) the source of extended services or, if the source of the extended services~~
11 ~~cannot be identified at the time of the IPE is developed, a description of~~
12 ~~the basis for a reasonable expectation that a source will become~~
13 ~~available; and~~

14
15 ~~(7) as determined to be necessary, a statement of projected need for post-~~
16 ~~employment services.~~

17
18 ~~(h) Prior to suspending, reducing, or terminating any planned service in the IPE, DBS~~
19 ~~shall send written notification of intent to the consumer's last known address.~~

20
21 ~~(i) DBS must suspend, reduce, or terminate the consumer's planned services no sooner~~
22 ~~than 10 working days after written notice has been mailed to the consumer.~~

23 24 ~~SUBCHAPTER B. DIVISION 4: CONSUMER PARTICIPATION~~

25 26 ~~§854.60. Purpose of Consumer Participation.~~

27
28 ~~Consumer participation establishes participation by the consumer in service costs to~~
29 ~~encourage the consumer's commitment to a vocational rehabilitation goal, to create a~~
30 ~~cooperative relationship between the consumer and DBS, and to maximize DBS' limited~~
31 ~~funds.~~

32 33 ~~§854.61. Scope of Consumer Participation.~~

34
35 ~~(a) DBS may not apply a financial needs test or basic living requirements (BLR) nor~~
36 ~~require financial participation of the consumer as a condition for furnishing the~~
37 ~~following vocational rehabilitation services:~~

38
39 ~~(1) assessment for determining eligibility and priority for services, except for~~
40 ~~vocational rehabilitation services other than those of a diagnostic nature~~
41 ~~provided under an extended evaluation;~~

42
43 ~~(2) assessment for determining vocational rehabilitation needs, including visits to~~
44 ~~Criss Cole Rehabilitation Center for assessments;~~

45
46 ~~(3) vocational rehabilitation counseling, guidance, and referral services by DBS;~~

- 1
2 ~~(4) employment assistance services by DBS;~~
3
4 ~~(5) diabetes education training;~~
5
6 ~~(6) vocational rehabilitation teacher services (including consumable supplies);~~
7
8 ~~(7) any auxiliary aid or service (for example, interpreter services, reader services)~~
9 ~~that the consumer needs in order to participate in the VR program;~~
10
11 ~~(8) orientation and mobility services;~~
12
13 ~~(9) personal assistance services; and~~
14
15 ~~(10) services paid for or reimbursed by a source other than DBS.~~
16
17 ~~(b) DBS may not apply a financial needs test, or require financial participation, as a~~
18 ~~condition for furnishing vocational rehabilitation services to consumers receiving~~
19 ~~Social Security benefits under Titles II or XVI of the Social Security Act.~~

20
21 ~~**§854.62. Refusal to Disclose Economic Resources.**~~
22

23 ~~Applicants, and members of the family, as defined in §106.419 of this subchapter~~
24 ~~(relating to Services to Family Members), have the right not to disclose their economic~~
25 ~~resources. When this information is not disclosed, economic resources are determined by~~
26 ~~DBS to be in excess of the allowable amounts.~~
27

28 ~~**SUBCHAPTER B. DIVISION 5: COMPARABLE BENEFITS**~~
29

30 ~~**§854.70. Comparable Services and Benefits.**~~
31

- 32 ~~(a) If comparable services or benefits exist under any other program and are available to~~
33 ~~the consumer at the time needed to achieve the rehabilitation objectives in the~~
34 ~~consumer's IPE, DBS must use those comparable services or benefits to meet, in~~
35 ~~whole or in part, the cost of vocational rehabilitation services.~~
36
37 ~~(b) If comparable services or benefits exist under any other program, but are not available~~
38 ~~to the consumer at the time needed to satisfy the rehabilitation objectives in the~~
39 ~~consumer's IPE, DBS must provide vocational rehabilitation services until those~~
40 ~~comparable services and benefits become available.~~
41
42 ~~(c) The following services are exempt from a determination of the availability of~~
43 ~~comparable services and benefits:~~
44
45 ~~(1) assessment for determining eligibility and priority for services;~~
46

- 1 ~~(2) assessment for determining vocational rehabilitation needs;~~
2
3 ~~(3) vocational rehabilitation counseling, guidance, and referral services;~~
4
5 ~~(4) placement services;~~
6
7 ~~(5) rehabilitation technology services; and~~
8
9 ~~(6) post-employment services consisting of the services listed under paragraphs (1)–~~
10 ~~(5) of this subsection.~~

11
12 ~~(d) The requirements of subsection (b) of this section also do not apply if:~~

- 13
14 ~~(1) determining the availability of comparable services and benefits under any other~~
15 ~~program would delay the provision of vocational rehabilitation services to any~~
16 ~~consumer whom DBS has determined to be at extreme medical risk, based on~~
17 ~~medical evidence provided by an appropriate qualified medical professional; or~~
18
19 ~~(2) an immediate job placement would be lost because of a delay in the provision of~~
20 ~~comparable services and benefits.~~

21
22 **SUBCHAPTER B. DIVISION 6: METHODS OF ADMINISTRATION OF VOCATIONAL**
23 **REHABILITATION**

24
25 **~~§854.80. Application of an Order of Selection.~~**

- 26
27 ~~(a) An order of selection is authorized in §101(a)(5)(A) of the Rehabilitation Act of 1973,~~
28 ~~as amended to ensure that consumers with the most severe disabilities are selected~~
29 ~~for service before other consumers in times of limited funding.~~
30
31 ~~(b) In determining whether to invoke an order of selection, the assistant commissioner for~~
32 ~~blind services applies the criteria set out in 29 U.S.C. §709, as amended; in 34 Code~~
33 ~~of Federal Regulations §361.36; and in the state plan.~~
34
35 ~~(c) The order of selection is applied after eligibility for services is determined.~~
36
37 ~~(d) To inquire if DBS is operating under the order of selection, a person may contact any~~
38 ~~DBS office, including the Central Office at 4800 North Lamar Boulevard, Austin,~~
39 ~~Texas.~~

40
41 **SUBCHAPTER B. DIVISION 7: CERTIFICATE OF BLINDNESS FOR TUITION WAIVER**

42
43 **~~§854.90. Purpose.~~**

44
45 ~~The purpose of this division is to set out the administration and general procedures~~
46 ~~governing the Certificate of Blindness for Tuition Waiver. DARS DBS provides a~~

1 certificate of blindness to a person who applies for tuition waiver at a state-supported
2 postsecondary school in Texas.

3
4 **§854.91. Legal Authority.**

5
6 The Certificate of Blindness for Tuition Waiver is created under authority of the
7 Education Code, Chapter 54, §54.364.

8
9 **§854.92. Definitions.**

10
11 The following words and terms, when used in this division, have the following meanings,
12 unless the context clearly indicates otherwise.

13
14 (1) ~~Applicant~~—A person applying to DARS DBS for a Certificate of Blindness for
15 Tuition Waiver.

16
17 (2) ~~Blind~~—As defined in Human Resources Code §91.002(2) means a person having
18 not more than 20/200 visual acuity in the better eye with correcting lenses or
19 visual acuity greater than 20/200 but with a limitation in the field of vision
20 such that the widest diameter of the visual field subtends an angle no greater
21 than 20 degrees.

22
23 (3) ~~Certificate of Blindness for Tuition Waiver~~—The certificate issued by DARS
24 DBS to certify that the applicant is a blind person as defined by Education
25 Code, §54.364(a)(2). The applicant may use the certificate to apply for a
26 tuition waiver at any Texas state institution of higher education using public
27 funds, as set forth in Education Code, §54.364(a)(5) and §1.003.

28
29 (4) ~~Consumer~~—An individual with a disability who has applied for, or who is
30 receiving vocational rehabilitation services.

31
32 **§854.93. Eligibility.**

33
34 (a) ~~For a DARS DBS consumer to obtain a certificate, the individual must make a request~~
35 ~~with his or her vocational rehabilitation counselor.~~

36
37 (b) ~~For a person who is not a DARS DBS consumer to obtain a certificate, the individual~~
38 ~~must submit a request in person or by mail to any DARS DBS office, and present~~
39 ~~visual diagnostic information confirming the person is blind as defined in~~
40 ~~§106.805(2) of this division (relating to Definitions).~~

41
42 (c) ~~Visual diagnostic information must include eye exams from an optometrist,~~
43 ~~ophthalmologist or low-vision specialist.~~

44
45 (d) ~~DARS DBS does not pay for a diagnostic exam for the sole purpose of obtaining this~~
46 ~~record.~~

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18

~~(e) Eligibility for a Certificate of Blindness for Tuition Waiver is determined by DARS DBS, and the determination is final.~~

~~(f) The Certificate of Blindness for Tuition Waiver issued by DARS DBS is not a determination that an applicant satisfies the residency requirement, or any other requirement set forth under Education Code, §54.364, for tuition waiver at any eligible institution.~~

~~**§854.94. Certificate of Blindness for Tuition Waiver.**~~

~~(a) DARS DBS is responsible for the design and content of the Certificate of Blindness for Tuition Waiver.~~

~~(b) The Certificate of Blindness for Tuition Waiver documents the name of the person to whom it is issued and contains the signature of an authorized DARS DBS representative.~~