

**ADOPTED REGULATION OF THE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES**

**LCB File No. R167-07**

Effective January 30, 2008

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-11, 14-25 and 53, NRS 426.245; §12, NRS 426.245, 426.305 and 426.317; §13, NRS 426.311 and 426.319; §§26-52, NRS 426.245 and 426.331.

A REGULATION relating to intermediary service organizations; establishing requirements governing the issuance and renewal of a certificate to operate an intermediary service organization; establishing the fees for the issuance and renewal of such a certificate; establishing requirements for the operation of an intermediary service organization; establishing the qualifications of a personal assistant employed by the client of an intermediary service organization; prescribing administrative sanctions for certain violations; and providing other matters properly relating thereto.

**Section 1.** Chapter 426 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 52, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 52, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Certificate” means a certificate to operate an intermediary service organization issued by the Office pursuant to the provisions of NRS 426.301 to 426.345, inclusive, and sections 2 to 25, inclusive, of this regulation.*

**Sec. 4.** *“Client” means a person with a disability who seeks or receives personal assistance in his home or other location where a person with a disability receives personal assistance, including, without limitation, a place of employment of the person with a disability,*

*or other responsible person who seeks or obtains such assistance on behalf of a person with a disability.*

**Sec. 5. 1.** *“Intermediary service organization” has the meaning ascribed to it in NRS 426.218.*

*2. The term does not include an organized group of persons composed of the family and friends of a person needing personal assistance that employs or contracts with persons to provide such assistance if:*

*(a) The organization of the group of persons is set forth in a written document that is made available for review by the Office upon request; and*

*(b) The personal assistance is provided to only one person or to members of a family who reside at the same residence.*

**Sec. 6.** *“Managing employer” means the person who selects, sets the schedule for and directs the training of a personal assistant.*

**Sec. 7.** *“Office” means the Office of Disability Services of the Department of Health and Human Services.*

**Sec. 8.** *“Other responsible person” has the meaning ascribed to it in NRS 426.301.*

**Sec. 9.** *“Personal assistance” has the meaning ascribed to it in NRS 426.301.*

**Sec. 10.** *“Personal assistant” has the meaning ascribed to it in NRS 426.301.*

**Sec. 11.** *As used in subparagraph (2) of paragraph (a) of subsection 2 of NRS 426.301, the Office will interpret the term “guardian” to include, without limitation, any person who is legally responsible for a person with a disability who suffers from a cognitive impairment.*

**Sec. 12. 1.** *The Office shall prescribe the form for an application to apply for a certificate.*

*2. An applicant for a certificate must submit with his application two complete sets of his fingerprints and written permission authorizing the Office to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report on the criminal history of the applicant.*

**Sec. 13.** *1. An applicant for a certificate must pay to the Office, at the time of application, a nonrefundable fee of \$2,748.*

*2. An applicant for the renewal of a certificate must pay to the Office, at the time of application for renewal, a nonrefundable fee of \$1,374.*

**Sec. 14.** *1. Each certificate must be separate and issued to a specific person or persons to operate the intermediary service organization. The name of the person responsible for the operation of an intermediary service organization must appear on the face of the certificate.*

*2. Each certificate must specify the primary location for the operation of an intermediary service organization, but a separate certificate is not required for each location where the intermediary service organization conducts business.*

*3. If an intermediary service organization conducts business at more than one location, all records required to be maintained by the intermediary service organization, including, without limitation, records of each client, personnel files and operational records, must be maintained at the primary location specified on the certificate.*

**Sec. 15.** *An applicant for a certificate and for the renewal of a certificate must provide to the Office with the initial application for a certificate, with the application for renewal of a certificate and at such other times upon request of the Office, proof that the intermediary service organization maintains adequate insurance coverage against liabilities resulting from*

*claims incurred in the course of operation. Such insurance coverage must include, without limitation:*

- 1. Workers' compensation insurance pursuant to chapters 616A to 617, inclusive, of NRS for each personal assistant employed by the intermediary service organization;*
- 2. Commercial general liability insurance in an amount not less than \$2,000,000 in general aggregate coverage and not less than \$1,000,000 per claim; and*
- 3. Insurance coverage for employee dishonesty in an amount not less than \$25,000 per claim.*

**Sec. 16.** *1. A person may operate an intermediary service organization and an agency to provide personal care services in the home if the person:*

- (a) Maintains separate records and clients for the intermediary service organization and the agency to provide personal care services in the home; and*
- (b) Distinguishes between the services to be provided by the intermediary service organization and the personal care services provided by the agency to provide personal care services in the home.*

*2. As used in this section, "agency to provide personal care services in the home" has the meaning ascribed to it in NRS 449.0021.*

**Sec. 17.** *1. An intermediary service organization shall ensure that each client of the intermediary service organization and personal assistant employed by the intermediary service organization is aware of and understands:*

- (a) The rights and responsibilities of the client;*
- (b) The ethical responsibilities of the personal assistant, including, without limitation, any responsibilities concerning the confidentiality of client information;*

*(c) The training requirements for the personal assistant as set forth in section 20 of this regulation;*

*(d) The policies and procedures to be used by the personal assistant for the control of infections, including, without limitation, the policies and procedures of the intermediary service organization and the universal precautions as defined in NAC 441A.195;*

*(e) The respective responsibilities of the personal assistant and the client to properly document the needs of the person with a disability and to properly document the provision of personal assistance to that person;*

*(f) The procedures that the personal assistant will follow when responding to medical and nonmedical emergencies of the person with a disability;*

*(g) The provisions of NRS 629.091 and the appropriate procedures that must be followed when providing assistance to a person with a disability pursuant to that section; and*

*(h) The procedures for a client to appeal the termination, reduction or suspension of services by the intermediary service organization.*

*2. An intermediary service organization shall:*

*(a) Remain open for operation during regular business hours;*

*(b) Maintain a telephone line at the location of the intermediary service organization that is listed on its certificate, which must be published in a public telephone directory;*

*(c) Have a federal taxpayer identification number;*

*(d) Maintain all business licenses required by state and local law;*

*(e) Maintain a written policy concerning the manner in which complaints from clients will be documented and resolved and a log which lists all complaints filed by clients; and*

*(f) Maintain a written policy concerning the procedures for a client to appeal the termination, reduction or suspension of services by the intermediary service organization.*

*3. If an intermediary service organization withholds any money from a personal assistant which must be forwarded to another person, including, without limitation, insurance premiums, fees required to be paid by the intermediary service organization pursuant to state or federal law on behalf of the personal assistant or money withheld at the request of the personal assistant, the intermediary service organization must transfer such money to the person designated for receipt of the money by the date required for such transfer.*

*4. An intermediary service organization may:*

*(a) Employ personal assistants to provide specific medical, nursing or home health care services for a person with a disability pursuant to NRS 629.091; and*

*(b) At the request of a client, assist in the development of a plan of care for a person with a disability.*

*5. An intermediary service organization shall not serve as the managing employer of a personal assistant.*

**Sec. 18. 1. Each personal assistant employed by an intermediary service organization must:**

*(a) Be at least 18 years of age;*

*(b) Demonstrate the ability to meet the needs of the person with a disability as outlined by the client;*

*(c) Demonstrate the ability to communicate effectively with the client;*

*(d) Obtain certification to perform first aid and cardiopulmonary resuscitation within 120 days after the date on which the personal assistant begins employment with the intermediary service organization;*

*(e) Be in good health as certified by a physician and must not be infected with any communicable disease that may be contagious; and*

*(f) If the personal assistant transports a person with a disability in a motor vehicle, maintain motor vehicle liability insurance.*

*2. An intermediary service organization shall serve as the employer of record for and shall maintain a personnel file for each personal assistant employed by the intermediary service organization. Each personnel file must include, without limitation:*

*(a) The name, address and telephone number of the personal assistant;*

*(b) The date on which the personal assistant began employment with the intermediary service organization;*

*(c) Proof that the personal assistant meets the qualifications set forth in subsection 1;*

*(d) Evidence that the intermediary service organization has submitted the personal assistant's fingerprints to the Central Repository for Nevada Records of Criminal History or the results of the criminal history report prepared by the Central Repository, as applicable; and*

*(e) Documentation submitted by the client pursuant to section 20 of this regulation of the training received by the personal assistant as required pursuant to that section.*

*3. An intermediary service organization shall, upon the request of the Office, make available to the Office all personnel files, including, without limitation, any personnel files that are maintained electronically.*

**Sec. 19.** *Upon receiving a report concerning any records of criminal history of a personal assistant from the Central Repository for Nevada Records of Criminal History pursuant to subsection 4 of NRS 426.335, an intermediary service organization shall provide to the client who selected the personal assistant the results of the report on the criminal history of the personal assistant.*

**Sec. 20. 1.** *The client of an intermediary service organization must serve as the managing employer of the personal assistant and must be responsible for the selection and termination of the personal assistant.*

**2.** *Each client shall ensure that:*

*(a) The personal assistant selected to provide services to the person with a disability under the direction of the client completes the training required pursuant to this section; and*

*(b) The personal assistant is able to safely perform the services required to meet the needs of the person with a disability.*

**3.** *Each client shall ensure that the personal assistant:*

*(a) Receives instruction from the client or a person designated by the client at the location where the personal assistant will provide services to the person with a disability;*

*(b) Within 120 days after being employed by the intermediary service organization, receives not less than 16 hours of training which must include, without limitation:*

*(1) The rights of a client, including, without limitation, confidentiality of client information and state and federal laws relating to confidentiality;*

*(2) First aid and cardiopulmonary resuscitation;*



*(3) Universal precautions, as defined in NAC 441A.195, and the control of infection, including, without limitation, information on blood-borne pathogens and infection control procedures;*

*(4) Body mechanics, transferring and mobility, including, without limitation, typical body movements, range of motion, prevention of back injury and potential fall hazards;*

*(5) Household safety and accident prevention, including, without limitation, the preparation of a home for safety and accident prevention;*

*(6) Basic communication skills, including, without limitation, techniques for sharing information with persons who require alternative modes of communication;*

*(7) Information concerning advance directives as defined in NRS 449.905;*

*(8) General awareness of issues relating to aging and disabilities, sensory, physical and cognitive disabilities, behavioral interventions targeted to specific populations, and the philosophy and principles of independent living; and*

*(9) The prevention of abuse, neglect and exploitation of a person with a disability, including, without limitation, identifying and reporting the full range of serious occurrences, and reporting of suspected cases of abuse, neglect or exploitation in the manner prescribed in NRS 200.5093, 200.50935 and 632.472; and*

*(c) Receives not less than 8 hours of training during each year of employment thereafter concerning such topics as determined by the client.*

*4. The client shall submit to the intermediary service organization documentation which includes, without limitation:*

*(a) The content of the training provided to the personal assistant pursuant to this section;*

*(b) The date on which the training was completed;*

- (c) The number of hours of training provided to the personal assistant; and*
- (d) A certificate indicating successful completion of the training.*

**Sec. 21.** *An intermediary service organization shall make available to a personal assistant employed by the intermediary service organization all training required pursuant to section 20 of this regulation and, at the request of a client, such additional training for a personal assistant as necessary to support the plan of care for the person with a disability, including, without limitation:*

- 1. General training for the personal assistant;*
- 2. Protocols for a personal assistant, including, without limitation, the rights and responsibilities of a client and of a personal assistant;*
- 3. The manner in which to groom and dress the person with a disability;*
- 4. Procedures for bathing and maintaining proper hygiene for a person with a disability, including, without limitation, bed-bath and tub-bath techniques;*
- 5. Caring for the bowel, bladder and skin of a person with a disability, including, without limitation, information concerning caring for a catheter, the identification and control of infection, common bowel problems, the early recognition of skin problems, the prevention of pressure sores and the routine inspection of skin;*
- 6. Assistive technology, including, without limitation, examples of assistive technology, how assistive technology can be used by the personal assistant and resources from which assistive technology may be obtained;*
- 7. Nutrition and food preparation, including, without limitation, information about preparing balanced meals, addressing special dietary needs or restrictions, guidelines for hydration and the proper handling and storage of food; and*

*8. The manner in which to maintain health records, including, without limitation, illustrations of how information should be conveyed in a written or dictated form to assure confidentiality and a means to ensure that the person with a disability receives services as outlined in the plan of care.*

**Sec. 22.** *1. Except as otherwise provided in subsection 3, an intermediary service organization shall, not less than once every 6 months, conduct a visit of the residence of the person with a disability or perform a telephone interview with the client to monitor the quality of care received by the person with a disability.*

*2. The intermediary service organization shall document each visit or telephone interview conducted pursuant to subsection 1. Such documentation must include, without limitation:*

*(a) The date of the visit or telephone interview;*

*(b) Whether the plan of care is meeting the needs of the person with a disability;*

*(c) Whether the personal assistant has received sufficient training to provide the services for the person with a disability; and*

*(d) Whether there have been changes in the health status of the person with a disability.*

*3. A client may decline to receive a visit or a telephone interview pursuant to subsection 1 by providing to the intermediary service organization a written waiver declining the visit or telephone interview. An intermediary service organization shall retain a copy of a written waiver in the record of the client.*

**Sec. 23.** *1. An intermediary service organization shall provide to each client for his signature a written statement which contains a description of the services provided by the intermediary service organization. The statement must include, without limitation:*

*(a) An easily understandable statement that it is not within the scope of services provided by the intermediary service organization to manage the medical and health conditions of a person with a disability;*

*(b) The qualifications and required training for personal assistants;*

*(c) The amount that will be charged for the services provided by the intermediary service organization;*

*(d) A description of billing methods, acceptable payment methods and due dates for payments, and the policy for notifying the client of any increase in the amount that will be charged for the services provided by the intermediary service organization;*

*(e) Criteria, circumstances or conditions which may result in the termination of services by the intermediary service organization, the procedures for notifying the client of such termination and the procedures for appealing such termination;*

*(f) The manner in which the intermediary service organization may be contacted during all hours when services are being provided to a person with a disability; and*

*(g) Information about the rights of a client of the intermediary service organization and the procedures for filing a grievance.*

*2. A copy of the signed statement must be maintained by the intermediary service organization in the records of the client maintained by the intermediary service organization.*

**Sec. 24. 1.** *An intermediary service organization shall discuss with each potential client before providing services:*

*(a) The planned training to be provided by the intermediary service organization to the personal assistant;*

*(b) The responsibilities of the intermediary service organization; and*

*(c) A contingency plan in the event that a personal assistant fails to report for a scheduled visit with the person with a disability.*

*2. The information discussed pursuant to subsection 1 and the result of that discussion must be documented and maintained in the records of the client maintained by the intermediary service organization.*

**Sec. 25. 1.** *An intermediary service organization shall ensure that a person with a disability who receives services from the intermediary service organization or, as applicable, other responsible person acting on his behalf:*

*(a) Has the right to select the personal assistant of his choice;*

*(b) Has the right to choose community-based care or institutional care;*

*(c) Receives services from the intermediary service organization without regard to race, color, creed, national origin, sex or disability;*

*(d) Is treated with respect, receives recognition of his individuality and is free from physical, verbal or psychological abuse;*

*(e) Is allowed to make informed decisions regarding the care of the person with a disability and to participate in the development of a plan of care;*

*(f) Receives a description of advance directives, as defined in NRS 449.905, and information on how to obtain an advance directive;*

*(g) Has the right to appeal any termination, reduction or suspension of services by the intermediary service organization and to receive a written explanation of decisions of the intermediary service organization relating to the provision of services;*

*(h) Receives confidential treatment of personal, medical and financial information;*

*(i) Has access to any records maintained by the intermediary service organization relating to the care of the person with a disability;*

*(j) Is informed of the primary contact person for the intermediary service organization, the person with whom a grievance may be filed with the intermediary service organization and the process to follow when filing a grievance with the intermediary service organization; and*

*(k) Receives timely responses to a concern expressed to the intermediary service organization regarding the provision of services by the intermediary service organization.*

*2. Each person with a disability who receives services from the intermediary service organization or, as applicable, other responsible person acting on his behalf must be provided with a written list of the rights set forth in subsection 1.*

*Sec. 26. As used in sections 26 to 52, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 27 to 35, inclusive, of this regulation have the meanings ascribed to them in those sections.*

*Sec. 27. “Ban on enrollment” means a prohibition on the provision of services to clients who are newly enrolled.*

*Sec. 28. “Cluster” means a violation that involves the same or similar kinds of services as one or more other violations.*

*Sec. 29. “Compliance” means that no major violation is present and that effective steps have been taken to resolve all violations.*

*Sec. 30. “De minimis violation” means a violation rated at a severity level of one or two and at a scope level of one or two.*

*Sec. 31. “Major violation” means a violation with a severity and scope score of five or more.*

**Sec. 32.** *“Plan of correction” means a plan developed by the intermediary service organization and approved by the Office that:*

*1. Describes the actions to be taken by the intermediary service organization to correct one or more violations; and*

*2. Specifies the date by which those violations will be corrected.*

**Sec. 33.** *“Resurvey” means a survey conducted after the initial survey to evaluate compliance with a plan of correction.*

**Sec. 34.** *“Severity and scope score” means the sum of the numerical levels of severity and scope assigned to a violation.*

**Sec. 35.** *“Subsequent violation” means a violation found on a resurvey.*

**Sec. 36.** *1. The Office shall impose at least one administrative sanction against an intermediary service organization for each violation by the intermediary service organization with a severity level of four and for each violation with a severity and scope score of six or more as determined pursuant to the provisions of sections 42 to 46, inclusive, of this regulation.*

*2. The Office may impose sanctions if violations of a severity level of three or less or a severity and scope score of less than six are identified.*

*3. The Office shall minimize the time between identification of a violation and the imposition of a sanction for the violation.*

**Sec. 37.** *The Office shall impose at least one sanction upon any intermediary service organization that has a violation with a severity level of four or a severity and scope score of six or more as determined pursuant to the provisions of sections 42 to 46, inclusive, of this regulation. More than one of these sanctions may be imposed at the discretion of the Office.*

**Sec. 38. 1.** *The Office may apply one or more sanctions as provided in NRS 426.329, including, without limitation:*

*(a) The imposition of a plan of correction as directed by the Office;*

*(b) The imposition of a ban on enrollment;*

*(c) Monitoring of the intermediary service organization by the Office;*

*(d) The assessment of monetary penalties in an amount set forth in section 52 of this regulation;*

*(e) The requirement that the intermediary service organization be managed temporarily by a person appointed by the Office; and*

*(f) The denial, suspension or revocation of the certificate.*

**2.** *If the Office chooses to impose a particular sanction, it must be applied according to the severity and scope factors established in sections 42 to 46, inclusive, of this regulation.*

**Sec. 39.** *Sanctions applied pursuant to sections 26 to 52, inclusive, of this regulation may be imposed until substantial compliance is achieved or, if compliance is not achieved, until the day before termination of the certificate becomes effective.*

**Sec. 40. 1.** *The Office will give notice of a sanction to the holder of a certificate by certified mail as required pursuant to NRS 426.333.*

**2.** *If there is an immediate and serious threat to the health and safety of any person with a disability served by an intermediary service organization, the Office may appoint a temporary manager to remove the threat.*

**3.** *The Office may, in an emergency, impose a ban on enrollment or may suspend a certificate upon transmitting notice of such sanction to the holder of the certificate by certified mail.*



**Sec. 41. 1.** *The Office may apply one or more sanctions on the basis of violations found during surveys or investigations of complaints conducted by the Office.*

*2. Violations must be reported to the intermediary service organization and any client of the intermediary service organization who may be affected by the violation. The report to the intermediary service organization must specify the violations found and the severity and scope score for each violation determined by the Office pursuant to the provisions of sections 42 to 46, inclusive, of this regulation.*

*3. Any violation for which a severity and scope score is not specified is presumed to be a de minimis violation.*

**Sec. 42.** *In determining the sanctions to be imposed, the Office shall consider the severity and scope of the violations according to the classifications of severity and scope described in sections 42 to 46, inclusive, of this regulation.*

**Sec. 43. 1.** *In determining the scope of a violation by an intermediary service organization, a survey of an intermediary service organization must evaluate a representative sample of clients of the intermediary service organization. The sample must consist of at least:*

<i>Number of clients</i>	<i>Minimum number of clients in sample</i>
<i>1 - 9.....</i>	<i>All clients</i>
<i>10 - 40.....</i>	<i>10</i>
<i>41 - 75.....</i>	<i>15</i>
<i>76 - 100.....</i>	<i>20</i>
<i>101 - 175.....</i>	<i>25</i>
<i>176 - 250.....</i>	<i>30</i>
<i>251 - 350.....</i>	<i>35</i>
<i>351 - 450.....</i>	<i>40</i>
<i>451 or more .....</i>	<i>50</i>

*2. In determining the scope of a violation involving particular kinds of services, the sampling of clients must evaluate a representative sample of clients of the intermediary service organization receiving or requiring the particular kinds of services.*

*3. The Office may review more than the minimum number of clients and determine the scope based on the number of clients actually reviewed.*

*4. If the Office investigates a specific complaint relating to a client, the Office may use only that client as the sample. The scope of any violation determined pursuant to this subsection must be a scope level of one.*

**Sec. 44.** *1. The scope scale must be used to assess the scope of a particular violation by the intermediary service organization.*

2. *The basis for the assessment is the actual or potential harm to clients as shown by:*

- (a) The frequency of the violation;*
- (b) The number or percentage of clients affected;*
- (c) The number or percentage of staff involved; and*
- (d) The pattern or lack of pattern of the violations.*

**Sec. 45.** *1. The scope of the violations must be evaluated using the criteria prescribed in this section.*

*2. A violation with a scope level of one consists of one or a few unrelated incidents in the sample surveyed. A violation is of this scope if it involves 20 percent or less of the clients sampled.*

*3. A violation has a scope level of two if the Office identifies a pattern of incidents involving the intermediary service organization, including, without limitation, any violations involving clients who require particular kinds of services. The number or percentage of clients or staff involved in the violation or the repeated occurrences of the violation in short succession may also establish a pattern by indicating a reasonable degree of predictability of similar incidents. A violation is also of this scope if it involves more than 20 percent but not more than 50 percent of the clients sampled.*

*4. A violation has a scope level of three if it occurs in a sufficient number or percentage of clients or staff or with sufficient regularity over time that it may be considered systemic or pervasive in or by the intermediary service organization. A violation is also of this scope if it involves more than 50 percent of the clients sampled.*

**Sec. 46.** *1. The severity scale must be used to assess the severity of a particular violation pertaining to the intermediary service organization. The basis for the assessment must be the*

*actual or potential harm to a person with a disability or, as applicable, other responsible person acting on his behalf.*

*2. Violations with a severity level of one concern requirements promulgated primarily for administrative purposes. No harm is likely to occur to a person with a disability. No negative impact has occurred or is likely to occur. The ability of a person with a disability to achieve the highest practicable physical, mental or psychosocial well-being has not been and is not likely to be compromised.*

*3. Violations with a severity level of two indirectly threaten the health, safety, rights, security, welfare or well-being of a person with a disability or, as applicable, other responsible person acting on his behalf. A potential for harm, as yet unrealized, exists. If continued over time:*

*(a) A negative impact on or a violation of one or more rights of a person with a disability or, as applicable, other responsible person acting on his behalf would occur or would be likely to occur; or*

*(b) The ability of one or more persons with disabilities to achieve the highest practicable physical, mental or psychosocial well-being would be or would likely be compromised.*

*4. Violations with a severity level of three create a condition or incident in the operation of an intermediary service organization that directly or indirectly threatens the health, safety, rights, security, welfare or well-being of a person with a disability or, as applicable, other responsible person acting on his behalf. A negative impact on the health, safety, rights, security, welfare or well-being of one or more persons with disabilities or, as applicable, other responsible person acting on his behalf has occurred or can be predicted with substantial probability to occur, or the ability of persons with disabilities to achieve the highest practicable*

*physical, mental or psychosocial well-being has been or is about to be compromised and requires intervention and correction of the violation. Violation of a partial or complete ban on enrollment imposed on an intermediary service organization or failure to implement a directed plan of correction is presumed to be a violation of this severity level.*

*5. Violations with a severity level of four create a condition or incident that has resulted in or can be predicted with substantial probability to result in death or serious harm to a person with a disability. As used in this subsection, “serious harm” includes serious mental harm, serious impairment of bodily functions, serious dysfunction of any bodily organ or part, life-threatening harm or death.*

*Sec. 47. If the same violation is found on a resurvey, there is a rebuttable presumption that the violation continued through the period between the survey and resurvey. A sanction may be imposed for a subsequent violation only if the resurvey is made and the violation is again actually found to be present.*

*Sec. 48. The Office shall initially assess individual violations or clusters of violations according to the following initial factors:*

- 1. The presence or absence of an immediate and serious threat to the health and safety of persons with disabilities who receive services from the intermediary service organization or, as applicable, other responsible person acting on his behalf; and*
- 2. The severity of the violation.*

*Sec. 49. After the initial assessment, the Office shall consider the following secondary factors in determining the sanction to impose:*

- 1. The relationship of one violation or cluster of violations to other violations;*

2. *The history of previous compliance by the intermediary service organization generally and specifically with reference to the violations in issue;*

3. *Whether the violations are directly related to the services received by a person with a disability from the intermediary service organization; and*

4. *The corrective and long-term compliance outcomes desired.*

**Sec. 50.** *The selection of a sanction must be based upon the nature of the violations or cluster of violations and the sanction most likely to correct those violations. Absent evidence to the contrary, restrictions upon service and monetary penalties are presumed to be the most effective sanctions for violations that do not cause an immediate and serious threat to clients.*

**Sec. 51.** 1. *The intermediary service organization shall develop a plan of correction for each violation and submit the plan to the Office for approval within 10 days after receipt of the notice of violations from the Office pursuant to section 40 of this regulation. The plan of correction must include specific requirements for corrective action, which must include the time within which the violations are to be corrected.*

2. *If the plan of correction is not acceptable to the Office, the Office may direct the intermediary service organization to resubmit a plan of correction or the Office may develop a directed plan of correction with which the intermediary service organization must comply.*

3. *Failure to submit the plan of correction to the Office within 10 days after receipt of the notice of violations constitutes a separate violation subject to monetary penalties pursuant to section 52 of this regulation with severity and scope rated at the same levels as the highest violation identified on the notice of violations.*

**Sec. 52.** 1. *In determining the amount of an initial monetary penalty, the Office shall consider the severity alone if the severity level is four. In determining the amount of the*

*monetary penalty where the severity level is less than four, the severity and scope score must be considered.*

*2. For initial violations with a severity level of four, an initial monetary penalty of up to \$1,000 per violation may be imposed.*

*3. For initial violations with a severity level of three and a scope level of three, a monetary penalty of up to \$800 per violation may be imposed.*

*4. For initial violations with a severity level of three and a scope level of two or less, an initial monetary penalty of up to \$400 per violation may be imposed.*

*5. For initial violations with a severity level of two and a scope level of three, an initial monetary penalty of up to \$200 per violation may be imposed. The payment of this monetary penalty must be suspended if the facility has corrected the violations within the time specified in the plan of correction approved by the Office.*

*6. Except as otherwise provided in subsection 7, in addition to any monetary penalty imposed pursuant to this section, the Office may impose a monetary penalty of not more than \$10 per client per day for each day the violation continues.*

*7. The total monetary penalties imposed by the Office pursuant to this section must not be more than \$1,000 per day for each violation, together with interest thereon at a rate of 10 percent per annum.*

**Sec. 53.** 1. The Office of Disability Services of the Department of Health and Human Services may issue a provisional certificate in accordance with NRS 426.325 to a person who is operating an intermediary service organization before January 30, 2008.

2. Such a provisional certificate is valid until:

(a) The person obtains a certificate to operate an intermediary service organization issued by the Office pursuant to the provisions of NRS 426.301 to 426.345, inclusive, and sections 2 to 25, inclusive, of this regulation; or

(b) June 30, 2008,

↳ whichever is earlier.



**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R167-07**

The Department of Health and Human Services adopted regulations assigned LCB File No. R167-07 which pertain to chapter 426 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

**A. NRS 233B.066(1)(a): A description of how public comment was solicited, a summary of the public response, and an explanation how other interested persons may obtain a copy of the summary.**

On September 18, 2007, the Office filed and made public (via its Web site and other public locations) the text of its proposed temporary regulation, along with a formal Notice of Workshops to Solicit Comments on Proposed Regulations. Separate workshops were held in Carson City and Las Vegas, and comments were incorporated into the draft regulations. A formal Notice of Intent to Act upon Regulations specifying a hearing date of January 7, 2008 was issued on November 26, 2007. The Notice also provided a deadline of January 4, 2008 for submission of written comments to the Office. Finally, the Notice informed the public that any person was invited to provide testimony during the hearing on January 7, 2008. The hearing was held in both Carson City and Las Vegas via video-conference. Comments on the proposed regulations came from affected agencies and were very supportive of the regulations. See Section C, below, concerning specific comments.

**B. NRS 233B.066(1)(b): The number of persons who (1) attended each hearing, (2) testified at each hearing, and (3) submitted to the agency written statements.**

Five people attended the hearing on this matter in both Carson City and Las Vegas. Two of the attendees gave testimony. No written comments were received by the Office.

**C. NRS 233B.066(1)(c): A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Public Notice was issued in the major newspapers of Las Vegas, Reno and Carson City. Additionally, an E-mail list of interested parties was compiled, including representatives of the home care industry and the disability community. Additionally, the Office held its workshops in conjunction with those held by the Bureau of Licensure and Certification on their regulations related to similar agencies. The workshops were attended by over 100 people.

An industry representative provided detailed comments that helped to clarify definitions in the regulations, strengthen the operational requirements of ISOs, and improve the practical application of the regulations. A member of the public provided comments that were incorporated, in recognition of the self-directed nature of ISO services.

Persons interested in viewing a summary of comments, or receiving a recording of the hearing, may contact the Office at 3656 Research Way, Suite 32, Carson City, NV 89706, (775) 687-4452.

**D. NRS 233B.066(1)(d): If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**  
Not applicable.

**E. NRS 233B.066(1)(e): The estimated economic effect of the regulation on the business which it is to regulate and on the public, including (1) both the adverse and beneficial effects, and (2) both immediate and long-term effects.**

Adverse: ISOs will be required to become certified and pay associated fees.

Beneficial: The industry supported regulations to protect people with disabilities from caregivers who have no oversight from any regulatory agency and to offer better options for self-directed care

Immediate: Agencies will be required to become certified and pay associated fees.

Long-term: Agencies may be reviewed for compliance with regulations.

**F. NRS 233B.066(1)(f): The estimated cost to the agency for enforcement of the Proposed regulations.**

There will be no additional cost to the agency as the fees collected are expected to cover the costs of administration.

**G. NRS 233B.066(1)(g): A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The Office is not aware of any regulations of other state or governmental agencies, which this regulation overlaps or duplicates.

**H. NRS 233B.066(1)(h): if the regulation includes provisions, which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

Not applicable.

**I. NRS 233B.066(1)(i): If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

An applicant for an ISO certificate must pay to the Office a nonrefundable fee of \$2,748, and a nonrefundable yearly renewal fee of \$1,374. The office expects to collect \$16,000-18,000 in the next year from these fees and will use them to hire a contact employee to help administer the certification process.