

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

OFFICE OF DISABILITY SERVICES

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

***INTERMEDIARY SERVICE ORGANIZATION TO PROVIDE
PERSONAL CARE SERVICES IN THE HOME***

General Provisions

Section 1. Chapter 426 of NAC is hereby amended by adding thereto the provisions set forth as section 2 to XXX, inclusive, of these regulations.

Sec. 2. *Definitions:*

1. *“Intermediary service organization” (ISO) means a nongovernmental entity that provides services authorized pursuant to this chapter for a person who has a disability or other responsible person. For purposes of this chapter the ISO serves as the employer of record, but differs from an agency to provide personal care services (NRS 449.XXX) in the home in that they do not serve as the managing employer and are authorized to provide skilled services pursuant to NRS 629.091. An entity wishing to act as both an ISO and an agency to provide personal care services in the home, must distinguish these functions by having separate policies, procedures, records and clients. The term ISO does not include:*
 - a. *An organized group of persons comprised of the family or friends of a person needing personal assistance services that employs or contracts with persons to provide services if:*
 - i. *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*

ii. The personal care services are provided to only one person or one family who resides in the same residence.

2. “Office” means the Office of Disability Services of the Department of Health and Human Services.

3. “Managing Employer” means the entity which selects, schedules, directs trains and discharges the caregiver. For purposes of this chapter the client serves as the managing employer.

4. “Client” means a person with a disability who desires the provision of personal care services in the home, in another residential location in which they live, or in other community-based locations, including employment sites, where the need for personal care services occurs. Any person wishing to receive services pursuant to NRS 629.091 must receive their personal assistance services from an ISO, rather than an agency to provide personal care services in the home as described in NAC 449.XXX.

5. “Other responsible person” means:

a. A parent or guardian of, or any other person legally responsible for, a person with a disability who is under the age of 18 years; or

b. A parent, spouse, guardian, adult child of, or other person legally responsible for a person with a disability who suffers from a cognitive impairment.

For purposes of these regulations, where the term “client” is used, it also implies “or other responsible person.”

6. “Personal assistance” means the provision of those services to help a person with a disability maintain his independence, personal hygiene and safety, including, without limitation, the provision of services by a personal assistant.

7. *“Personal assistant” means a person who, for compensation and under the direction of a person with a disability or other responsible person, performs services for a person with a disability to help him maintain his independence, personal hygiene and safety.*

Sec. 3 Certificates:

In accordance with NRS 426.XXX, the Office is vested with the authority to certify or deny the right of an ISO to contract with clients of personal assistance services. As such:

1. *Each certificate is separate and distinct, and is issued to a specific person to operate an ISO at a specific location. An ISO is not required to have a separate certificate for multiple locations as long as the ISO maintains all required client, staff and operational records at the specific location identified on the certificate. The name of the person who is designated as responsible for its conduct must appear on the face of the certificate.*
2. *Each ISO must have evidence that it is adequately covered against liabilities resulting from claims incurred in the course of operation and must verify this coverage upon its initial application and during future periodic onsite surveys.*
3. *All ISOs established after June 30, 2008 shall not provide service to an individual before the ISO is certified by the Office of Disability Services, in accordance with NRS 426.*

ISO Administration

Sec. 4. General Responsibilities:

1. *An ISO shall:*
 - a. *Obtain a criminal background check of a personal assistant selected by the person with a disability or other responsible person and share the results of the background check with the person with a disability or other responsible person;*

- b. Work with the personal assistant and the client to ensure their knowledge of:
 - i. Client's rights and responsibilities;*
 - ii. Ethics, including confidentiality of client information;*
 - iii. Required and ongoing training;*
 - iv. Infection control policies;*
 - v. Documentation of client needs and services provided;*
 - vi. Procedures related to medical and non-medical emergency response;**
- c. Ensure that procedures are followed in compliance with NRS 629.091 when a client is receiving covered services;*
- d. Be open at least during regular daytime business hours;*
- e. Have a fixed business land line and phone number published in a public telephone directory;*
- f. Have a federal tax identification name and number;*
- g. Provide worker's compensation insurance for all personal assistants they employ;*
- h. Carry commercial general liability insurance of not less than \$2,000,000 general aggregate coverage and \$1,000,000 coverage per occurrence;*
- i. Carry insurance covering employee dishonesty with a minimum limit of \$25,000 per loss;*
- j. Have current state and local business licenses, as required;*
- k. Provide payroll services to pay the personal assistant; determine any tax liability; withhold necessary taxes and transfer funds for any insurance premiums or fees required by law or desired by the personal assistant; and*

- l. Have a written policy to document and resolve client complaints, and a log to list all complaints raised by clients.*
- 2. An ISO may:*
 - a. Provide financial management supports desired by the client;*
 - b. Assist the client in developing a plan of care if the client so desires.*

Sec. 5. Personnel Files.

- 1. A separate personnel file must be kept for each personal assistant employed by an ISO and must include:*
 - a. The name, address and telephone number of the employee;*
 - b. The date on which the employee began their employment;*
 - c. The documentation required pursuant to Chapter 441A.375(3)(b) of NAC related to Tuberculosis screening for the employee;*
 - d. Evidence that each applicant for a certificate to operate an ISO submitted to the Central Repository for Nevada Records of Criminal History two complete sets of fingerprints for submission to the Federal Office of Investigation for its report;*
 - e. A certificate stating that the personal assistant is currently certified to perform first aid, and cardiopulmonary resuscitation. These certifications must be obtained within 120 days of hire;*
 - f. Proof that the personal assistant is 18 years of age or older;*
 - g. Proof of automobile liability insurance coverage if the personal assistant will be transporting clients in a motor vehicle; and*
 - h. Documentation of all training. The documentation shall include, but not be limited by the following:*

- i. The content of the training, date(s) when the training was completed and the number of hours of each training session; and*
 - ii. Certificate indicating successful completion of training.*
- 2. The Central Repository for Nevada Records of Criminal History shall determine whether the applicant has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188 and immediately inform the ISO and the Office whether the applicant has been convicted of such a crime.*
- 3. The ISO shall make personnel files available for inspection by the Office of Disability Services during any inspection and upon request, including electronic records.*

Sec. 6. Supervision. *The client shall serve as the supervisor of the personal assistant, but the ISO shall conduct home visits or telephone calls to the client's residence to monitor program and care quality at least every six months, or as needed. A client may waive this supervisory oversight requirement, in writing, and such waiver must be retained in the client file.*

- 1. Each supervisory visit or telephone call shall be documented and dated, and shall consist of:*
 - a. Whether the service plan is meeting the client's needs;*
 - b. Whether the personal assistant has received sufficient training for the service;*
and
 - c. Whether there have been changes in the health status of the client.*

Minimum Qualifications and Training for Personal Assistants

Sec. 7. Minimum Qualifications:

- 1. Be at least 18 years of age;*

2. *Be chosen by the client to act as their personal assistant; and*
3. *Once on the job, be able to demonstrate the ability to meet the care needs of the client, and the ability to communicate with the client.*

Sec. 8. Training:

It is the responsibility of the client to ensure their personal assistant has completed the necessary training and to judge the personal assistant's ability to safely do the job. It is the responsibility of the ISO to make the needed training available and to document training outcomes.

1. *Personal assistants employed under an ISO shall participate in and complete training before independently providing services to clients. The training program shall include provisions for the personal assistant to receive on-the-job instruction provided by the client.*
2. *At least 16 hours of initial training shall be provided and at least 8 hours of annual training thereafter.*
3. *Personal assistants shall receive training in client's rights including protecting client confidentiality pursuant to applicable state and federal regulations.*
4. *Personal assistants shall be trained in first aid and cardiopulmonary resuscitation through an accredited program.*
5. *Personal assistant training shall include the following topics:*
 - a. *Universal precautions and infection control including information on blood borne pathogens and infection control procedures to include hepatitis;*
 - b. *Body mechanics, transferring, and mobility including typical body movements, range of motion, back injury prevention, and fall zones;*

- c. Household safety and accident prevention including preparing a home for safety and accident prevention;*
 - d. Basic communication skills, confidentiality and advanced directives including techniques to share information with individuals who require alternative modes of communication, illustration of some common difficulties in communication and strategies to address those difficulties, client confidentiality, and advanced directives;*
 - e. General awareness of: aging and disability; sensory, physical and cognitive disabilities; changes in the aging process; population-specific behavior interventions; and the philosophy and principles of independent living; and*
 - f. Consumer abuse or neglect including insights to help assistants in identifying and reporting the full range of serious occurrences.*
- 6. As needed to support the client's plan of care, additional personal assistant training may include, without limitation:*
- a. General orientation to the job of personal assistant;*
 - b. Personal assistant do's & don'ts including client and personal assistant rights and responsibilities;*
 - c. Grooming and dressing including proper grooming and dressing procedures;*
 - d. Bathing and hygiene including bed-bath and tub-bath techniques, and guidelines for proper hygiene;*
 - e. Bowel, bladder and skin care including information on catheter care, bowel programs, infection identification and control, common bowel problems, early*

recognition of skin problems, prevention of pressure sores and routine inspections of skin;

- f. Assistive technology including examples of assistive technology, how they can be used in the personal assistance process, and resources from which assistive technology can be obtained;*
- g. Nutrition and food preparation including information about preparing balanced meals, special dietary needs or restrictions, guidelines for client hydration and the proper handling and storage of food; or*
- h. Health oriented record keeping including illustrations of how information should be conveyed in a written or dictated form to assure confidentiality as well as a means to ensure that consumers receive services as outlined in a plan of care.*

Disclosure, Screening, and Acceptance of Clients

Sec. 9. Disclosure Statement:

- 1. When an individual client contracts for ISO services, a written disclosure statement shall be signed by the potential client or other responsible person, and a copy shall be incorporated into the client record.*
- 2. All existing clients of the ISO at the time of initial certification must receive the disclosure statement within six months of initial certification of the ISO.*
- 3. The disclosure statement must include a description of the services offered by the ISO, including but not limited to the following:*

- a. A statement easily understandable by the client, indicating that it is not within the scope of the ISO's certificate to manage the medical and health conditions of clients;*
- b. The qualifications and training requirements for personal assistants;*
- c. The charges for the services provided by the ISO;*
- d. A description of billing methods, payment systems and due dates, and the policy for notification of increases in the costs of the ISO's services;*
- e. Criteria, circumstances, or conditions which may result in termination of services by the ISO and client notification of such;*
- f. Procedures for contacting the ISO during all hours during which services are provided; and*
- g. Client's rights information and grievance procedure.*

Sec. 10. Rights of the Client:

- 1. The written description of clients rights shall include, but not be limited to the following:*
 - a. The right to select the personal assistance service provider of their choice;*
 - b. The right to choose between community-based care and institutional care;*
 - c. The right to individualized services without regard to race, color, creed, national origin, sex, or disability;*
 - d. The right to be treated with respect, to receive recognition of their individuality, and to be free from physical, verbal, or psychological abuse;*
 - e. The right to make informed decisions regarding their care, and to participate in the development of a service plan;*

- f. An explanation of advance directives, including a description of the state law related to advance directives and information on where advance directive forms may be obtained;*
- g. The right to appeal any termination, reduction or suspension of services and to receive a written explanation of decisions made;*
- h. The right to confidential treatment of their personal, medical, and financial information;*
- i. The right to access all records the ISO has about them;*
- j. The right to know who the primary contact is for the ISO, to whom they may file a grievance, and the process to follow; and*
- k. The right to receive timely responses to their concerns.*

Sec. 11 *Limitation of Services*

Personal assistants employed by an ISO are permitted to provide skilled medical services, but only as allowed under NRS 629.091.

Sec. 12. *Service Plan*

The ISO must review and document with the client the following items before the initiation of services, and as needed. Documentation of each of these items shall be maintained by the ISO in the client record:

- 1. The planned training to be provided, including the necessary training and approvals pursuant to NRS 629.091, when skilled services will be provided to the client;*
- 2. ISO responsibilities; and*
- 3. The back-up plan to be followed when the personal assistant does not appear for a scheduled visit.*

Sec. 13 Fees

The ISO must pay to the Office a nonrefundable fee of \$2,748 to apply for a certificate. An applicant for the renewal of a certificate must pay to the Office a nonrefundable fee of \$1,374. Each certificate issued expires on December 31 following its issuance and is renewable for 1 year upon reapplication and payment of all fees required.

Sec. 14 Administrative Sanctions

Definitions

- 1. "Ban on enrollment" means a prohibition on the provision of care, treatment or services to clients who are newly admitted.*
- 2. "Cluster" means a deficiency that involves the same or similar kinds of care, treatment or services as one or more other deficiencies.*
- 3. "Compliance" or "substantially correct the deficiency" means that no major deficiency is present and that effective steps have been taken to resolve all deficiencies.*
- 4. "Costs" means the expenses of implementing and enforcing administrative sanctions and of bringing an action in a court of competent jurisdiction. The term includes, without limitation, filing fees, fees for service of notices or process and all expenses of litigation recoverable as costs pursuant to chapter 18 of NRS.*
- 5. "De minimis deficiency" means a deficiency rated at a severity level of one or two and at a scope level of one or two.*
- 6. "Immediate family" means the spouse, parent, child or sibling of a client.*
- 7. "Initial deficiency" means the first occurrence of a particular deficiency recorded by the Office. The term includes any deficiency found during a standard survey, during an extended survey or in response to a complaint.*

8. *“Major deficiency” means a deficiency with a combined severity and scope rating of five or more.*
9. *“Plan of correction” means a plan developed by the ISO and approved by the Office that:*
 - a. *Describes the actions to be taken by the ISO to correct one or more deficiencies; and*
 - b. *Specifies the date by which those deficiencies will be corrected.*
10. *“Provider agreement” means an agreement between a ISO and:*
 - a. *The Centers for Medicare and Medicaid Services, if the ISO is a Medicare ISO; or*
 - b. *The Division of Health Care Financing and Policy, if the ISO is a Medicaid ISO.*
11. *“Repeated deficiency” means a deficiency found by the Office again within 18 months, including one found at a follow-up survey, an investigation of a complaint or the next annual survey.*
12. *“Resurvey” means a subsequent survey conducted to evaluate compliance with a plan of correction.*
13. *“Severity and scope score” means the sum of the numerical levels of severity and scope assigned to a deficiency.*
14. *“Subsequent deficiency” means a deficiency found on a resurvey.*

Imposition: Generally

At least one administrative sanction, as allowed under NRS 426.XXX, must be imposed for each deficiency on an ISO with a severity level of four and for each deficiency with a combined severity and scope score of six or more. The Office may impose sanctions if deficiencies of a severity level three or less or a combined severity and scope score of less than six are identified. In any case, the office will work to minimize the time between identification of a deficiency and the imposition of a sanction.

1. Requirement for imposition: multiple sanctions

The Office must impose at least one of the sanctions listed upon any ISO that has a deficiency with a severity level of four or a combined severity and scope score of six or more. More than one of these sanctions may be imposed at the discretion of the Office.

2. Imposition of one or more sanctions: criteria for imposition of particular sanction

The Office may apply one or more sanctions. If the Office chooses to impose a particular sanction, it must be applied according to the severity and scope factors established in NAC 426.XXX.

3. Imposition in lieu of or in addition to recommendation to terminate provider agreement: duration of sanctions

Sanctions applied pursuant to NRS 426.XXX may be imposed until substantial compliance is achieved or, if compliance is not achieved, until the day before termination of the license or provider agreement becomes effective.

4. Imposition in emergencies: Authority; notice

If necessary to protect the public health and safety, the Office may impose such sanctions as are necessary without notice to the ISO or by oral notice to the ISO. If there is an immediate and serious threat to the health and safety of clients served by an ISO, the Office may appoint a temporary manager to remove the threat. A temporary manager may also be appointed without prior written notice on an emergency basis if an ISO violates any ban on new clients. If there is an immediate and serious threat to the health and safety of clients, the times provided for notice contained in this subsection govern. In all other respects, the provisions governing temporary management found in NRS 426.XXX apply.

The Office may, in an emergency, impose a ban on new clients or may suspend the certificate of an ISO without notice or upon oral notice as provided in this section. In any case where sanctions are imposed without written notice, the Office shall provide written notice within 48 hours after the imposition of the sanctions.

Deficiencies: Basis for imposition of sanctions; reporting; presumption of de minimis deficiency

The Office may apply one or more sanctions on the basis of deficiencies found during surveys or investigations of complaints conducted by the Office. Deficiencies must be reported to the ISO and the affected clients. The notice to the ISO must specify the deficiencies found and the severity and scope score for each deficiency determined by the Office. Any deficiency for which a severity and scope score is not specified is presumed to be a de minimis deficiency.

Classifications of severity and scope of deficiencies: Use

In determining the sanctions to be imposed, the Office shall consider the severity and scope of the deficiencies according to the classifications of severity and scope described in 426.XXX to 426.XXX, inclusive.

Scope of violations: Evaluation of representative sample of clients; size of sample

In determining the scope of a violation, a survey of an ISO must evaluate a representative sample of clients as described in the protocol for the survey of such an ISO. The sample must consist of at least the following size:

<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>

In determining the scope of a violation involving particular kinds of care, treatment or services, the survey must evaluate a representative sample of clients receiving or requiring the particular kinds of care, treatment or services.

The Office may review more than the minimum number of clients. If it does so, the determination of scope must be based on the number of clients actually reviewed. If the Office investigates a complaint relating to a client, the Office may sample only that client. The scope of any deficiency cited pursuant to this subsection must be scope level one.

Scope of deficiencies: Use of scope scale; basis for assessment.

- 1. The scope scale must be used to assess the scope of a particular deficiency in or by the ISO.*
- 2. The basis for the assessment is the actual or potential harm to clients as shown by:

 - a. The frequency of the deficiency;*
 - 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 deficiencies.**

Scope of deficiencies: Criteria for evaluation.

- 1. The scope of the deficiencies must be evaluated using the criteria prescribed in this section.*

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

3. A deficiency is scope level two if the Office identifies a pattern of incidents at the ISO, including any deficiencies involving clients who require particular kinds of care, treatment or service. The number or percentage of clients or staff involved in the incidents or the repeated occurrences of incidents in succession may also establish a pattern by indicating a reasonable degree of predictability of similar incidents. A deficiency is also of this scope if it involves more than 20 percent but not more than 50 percent of the clients sampled in an ISO.

4. A deficiency is of scope level 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 ISO. A deficiency is also of this scope if it involves more than 50 percent of the clients sampled in an ISO.

Severity of deficiencies: Use of severity scale; basis for assessment; criteria for evaluation.

1. The severity scale must be used to assess the severity of a particular deficiency pertaining to the ISO. The basis for the assessment must be the actual or potential harm to clients.

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

3. Deficiencies of severity level two, indirectly threaten the health, safety, rights, security, welfare or well-being of a client. A potential for harm, as yet unrealized, exists. If continued over time, a negative impact on one or more clients or a violation of one or more clients' rights

would occur or would be likely to occur or the ability of one or more clients to achieve the highest practicable physical, mental or psychosocial well-being would be, or would likely be, compromised.

4. Deficiencies of severity level three create a condition or incident in the operation of an ISO that directly or indirectly threatens the health, safety, rights, security, welfare or well-being of one or more clients. A negative impact on the health, safety, rights, security, welfare or well-being of one or more clients has occurred or can be predicted with substantial probability to occur or the ability of clients 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 deficiency. Violation of a partial or complete ban on enrollments imposed on an ISO or failure to implement a directed plan of correction is presumed to be a deficiency of this level of severity.

5. Deficiencies of severity level 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 client. 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.

Presumption when same deficiency found on resurvey; imposition of sanction for subsequent deficiency.

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

Available sanctions.

The sanctions available for all facilities include:

- 1. The imposition of a plan of correction as directed by the Office;*
 - 2. The imposition of a ban on enrollments;*
 - 3. Monitoring of the ISO by the Office;*
 - 4. The assessment of monetary penalties;*
 - 5. The requirement that the ISO be managed temporarily by a person appointed by the Office;*
- and*
- 6. The denial, suspension or revocation of the certificate of the ISO.*

Determination of appropriate sanction: Initial assessment.

The Office shall initially assess individual deficiencies or clusters of deficiencies according to the following initial factors:

- 1. The presence or absence of an immediate and serious threat to the health and safety of residents; and*
- 2. The severity of the deficiency.*

Determination of appropriate sanction: Consideration of secondary factors.

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

- 1. The relationship of one deficiency or cluster or pattern of deficiencies to other deficiencies;*
- 2. The history of previous compliance by the ISO generally and specifically with reference to the deficiencies in issue;*

3. Whether the deficiencies are directly related to the care, services or treatment received by persons from the ISO; and

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

Determination of appropriate sanction: Basis for selection; presumption.

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

Plan of Correction

Development and submission of plan; authority of Office when plan is not acceptable; effect of failure to submit plan.

1. The ISO shall develop a plan of correction for each deficiency and submit the plan to the Office for approval within 10 days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

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

3. Failure to submit the plan of correction to the Office within 10 days constitutes a separate deficiency subject to monetary penalties with severity and scope rated at the same levels as the highest deficiency identified on the notice of deficiencies.