

PROPOSED REGULATION OF THE STATE BOARD OF HEALTH

LCB File No. R105-13

These regulations are being proposed in accordance with Senate Bill 51 of the 2013 Legislative Session.

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

Chapter 449 and Chapter 427A of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 61, inclusive, of this regulation.

Intermediary Service Organizations

Section 1 As used in ~~NAC 427A.800 to 427A.871~~ *section 1 to section 60*, inclusive, unless the context otherwise requires, the words and terms defined in ~~NAC 427A.803 to 427A.813~~ *section 2 to section 10*, inclusive, have the meanings ascribed to them in those sections.

Sec. 2 “Certificate” means a certificate to operate an intermediary service organization issued by the Division pursuant to the provisions of ~~NRS 427A.701 to 427A.745~~ *Senate Bill 51 of the 2013 Legislative Session*, inclusive, and ~~NAC 427A.800 to 427A.829~~ *section 1 to section 25 of these proposed regulations*, inclusive.

Sec. 3 “Client” means a person with a disability who seeks or receives personal assistance in his or her 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. 4 “*Division*” ~~means the Aging and Disability Services Division of the Department of Health and Human Services~~ *has the meaning ascribed to it in NRS 652.035.*

Sec. 5 1. “Intermediary service organization” has the meaning ascribed to it in ~~NRS 427A.0291~~ *section 2 of Senate Bill 51 of the 2013 Legislative Session.*

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 Division 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 “Other responsible person” has the meaning ascribed to it in ~~NRS 427A.701~~ *section 3 of Senate Bill 51 of the 2013 Legislative Session.*

Sec. 8 “Personal assistance” has the meaning ascribed to it in ~~NRS 427A.701~~ *section 3 of Senate Bill 51 of the 2013 Legislative Session.*

Sec. 9 “Personal assistant” has the meaning ascribed to it in ~~NRS 427A.701~~ *section 3 of Senate Bill 51 of the 2013 Legislative Session.*

Sec. 10 As used in subparagraph (2) of paragraph (a) of subsection 2 of ~~NRS 427A.701~~ *Senate Bill 51 of the 2013 Legislative Session*, the Division 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. 11 1. The Division will prescribe the form for an application to apply for a certificate.

2. An applicant for a certificate must submit with his or her application two complete sets of his or her fingerprints and written permission authorizing the Division 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. 12 1. An applicant for a certificate must pay to the Division, at the time of application, a fee of \$2,748.

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

Sec. 13 An applicant for a certificate and for the renewal of a certificate must provide to the Division with the initial application for a certificate, with the application for renewal of a certificate and at such other times upon request of the Division, 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. 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 1. The Division may issue a provisional certificate to an intermediary service organization pursuant to ~~[NRS 427A.723]~~ *section 14 of Senate Bill 51 of the 2013 Legislative Session* if the Division determines that the intermediary service organization is substantially, but not fully, in compliance with ~~[NRS 427A.701 to 427A.745]~~ *the provisions of Senate Bill 51 of the 2013 Legislative session*, inclusive ~~[, and NAC 427A.800 to 427A.871, inclusive]~~.

2. A provisional certificate issued pursuant to subsection 1:

(a) Expires 90 days after its issuance unless, within the 90-day period, the Division issues a nonprovisional certificate to the intermediary service organization.

(b) Is nonrenewable.

3. The Division will provide in writing to each intermediary service organization which is issued a provisional certificate pursuant to subsection 1 the conditions that the intermediary service organization must meet before the Division will issue a nonprovisional certificate.

Sec. 16 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 ~~[NAC 427A.824]~~ *section 19 of these proposed regulations*;

(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. 17 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 19 of these proposed regulations 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 Division, make available to the Division all personnel files, including, without limitation, any personnel files that are maintained electronically.

Sec. 18 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 427A.735~~ *section 20 of SB 51 of the 2013 Legislative Session*, 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. 19 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 bloodborne 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. 20 An intermediary service organization shall make available to a personal assistant employed by the intermediary service organization all training required pursuant to ~~NAC 427A.824~~, *section 19 of Senate Bill 51 of the 2013 Legislative Session* 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. 21 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. 22 1. An intermediary service organization shall provide to each client for his or her 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. 23 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. 24 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 or her behalf:

(a) Has the right to select the personal assistant of his or her 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 or her 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 or her behalf must be provided with a written list of the rights set forth in subsection 1.

Sec. 25 1. An applicant for a certificate to operate an intermediary service organization or a person who is certified to operate an intermediary service organization may submit a written request to the Administrator or the Administrator's designee for an administrative review of a complaint if the complainant:

- (a) Has a legitimate grievance with any action of the Division in the certification process; and
- (b) Has not resolved the grievance through informal negotiations with an officer of the Division.

2. Not later than 30 days after the occurrence of the action that is the cause of the grievance of the complainant, a request for an administrative review must be mailed by registered or certified mail, return receipt requested, to the Administrator or the Administrator's designee.

3. A request for an administrative review must include:

- (a) The date of the occurrence of the action which is the cause of the grievance of the complainant;
- (b) A statement of the complaint, including each issue that the complainant considers relevant to the complaint;
- (c) A statement of each resolution of the complaint offered by the complainant;
- (d) Citations to the statutes or regulations, if any, which pertain to the complaint;
- (e) A statement which supports the position of the complainant;
- (f) The mailing address and telephone number of the complainant; and
- (g) The signature of the complainant and the date of the signature.

Sec. 26 The Administrator or the Administrator's designee shall conduct an administrative review at a time and place which is reasonable for the parties. Unless otherwise scheduled to accommodate the complainant, the Administrator or the designee shall conduct an administrative review within 10 days after the Administrator or the designee receives a request for an administrative review pursuant to ~~NAC 427A.830~~ *section 25 of these proposed regulations*.

Sec. 27 An administrative review must be:

1. Conducted informally without attorneys or witnesses.
2. Based on the record available, except that the complainant may, upon the complainant's request, appear and present additional facts.

Sec. 28 1. Not later than 15 days after an administrative review, the Administrator or the Administrator's designee shall issue a written decision, including the findings of fact and conclusions of law concerning the complaint and any appropriate orders.

2. The Division will mail the written decision to the complainant by registered or certified mail, return receipt requested, or a representative of the Division may personally deliver the decision to the complainant and read it to the complainant. If the decision is personally delivered to the complainant, the complainant shall date and sign a copy of the decision as an acknowledgment of the receipt.

Sec. 29 1. Not later than 15 days after receipt of a written decision on a complaint, a complainant may submit a written request to the Administrator for a hearing on the complaint. The request must be mailed to the Administrator by certified or registered mail, return receipt requested.

2. The written request for a hearing must include a copy of the original complaint filed by the complainant.

Sec. 30 1. Not later than 30 days after the Administrator receives a written request for a hearing, a hearing officer appointed by the senior hearing officer of the Hearings Division of the Department of Administration shall conduct a hearing at a time and location that is reasonable for the parties. The hearing officer must not have any personal involvement in the complaint.

2. Not less than 10 days before the date of the hearing, the Aging and Disability Services Division will, in accordance with NRS 233B.121, provide to all parties notice of the time, date and place of the hearing.

Sec. 31 1. The complainant may be represented at the hearing by an attorney or another person designated by the complainant.

2. The hearing officer is not bound by the technical rules of evidence. Decisions concerning the admissibility of evidence must be made in accordance with NRS 233B.123.

3. Each party must be granted the opportunity to present the party's case, examine and cross-examine witnesses, and rebut evidence.

Sec. 32 Unless otherwise provided by statute, a complaint may be resolved by arbitration, mutual agreement of the parties, settlement, consent decree or default of a party.

Sec. 33 1. A final decision by a hearing officer on a complaint must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact must include a statement of the facts which support the findings.

2. Not more than 30 days after a final decision is made, a party may appeal the final decision of the hearing officer and request judicial review pursuant to NRS 233B.130 to 233B.150, inclusive.

Sec. 34 The record of the hearing must include:

1. The transcript of the oral testimony provided at the hearing;
2. All pleadings and motions filed by the parties;
3. Any rulings made by the hearing officer, including rulings on offers of proof;
4. Evidence that was admitted;

5. Facts which were officially noticed by the hearing officer; and
6. Any other decision, opinion or report of the hearing officer.

Sec. 35 Upon request of a party, the Division will provide a transcript of the oral proceedings of the hearing. The Division may require payment of the cost incurred for providing the transcript.

Administrative Sanctions

Sec. 36 *As used in ~~[NAC 427A.840 to 427A.871]~~ section 36 of these proposed regulations to section 60 of these proposed regulations* inclusive, unless the context otherwise requires, the words and terms defined in ~~[NAC 427A.841 to 427A.849]~~, *section 37 of these proposed regulations to section 45*, inclusive, have the meanings ascribed to them in those sections.

Sec. 37 “Ban on enrollment” means a prohibition on the provision of services to clients who are newly enrolled.

Sec. 38 “Cluster” means a violation that involves the same or similar kinds of services as one or more other violations.

Sec. 39 “Compliance” means that no major violation is present and that effective steps have been taken to resolve all violations.

Sec. 40 “De minimis violation” means a violation rated at a severity level of one ~~for two and at a scope level of one or two~~.

Sec. 41 “Major violation” means a violation with a severity ~~and scope score of five or more~~ *of four*.

Sec. 42 “Plan of correction” means a plan developed by the intermediary service organization and approved by the Division 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. 43 “Resurvey” means a survey conducted after the initial survey to evaluate compliance with a plan of correction.

Sec. 44 “Severity ~~and scope~~ score” means ~~the sum of the numerical levels of severity and scope assigned to a violation~~ *the severity number assigned to a violation*.

Sec. 45 “Subsequent violation” means a violation found on a resurvey.

Sec. 46 1. The Division will 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 NAC 427A.861 to 427A.865, inclusive~~.

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

3. The Division will minimize the time between identification of a violation and the imposition of a sanction for the violation.

Sec. 47 The Division will impose at least one sanction upon any intermediary service organization that has a violation with a severity level of four ~~for a severity and scope score of six or more as determined pursuant to the provisions of NAC 427A.861 to 427A.865, inclusive~~. More than one of these sanctions may be imposed at the discretion of the Division.

Sec. 48 1. The Division may apply one or more sanctions as provided in ~~NRS 427A.729~~ *section 17 of Senate Bill 51 of the 2013 Legislative Session*, including, without limitation:

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

(b) The imposition of a ban on enrollment;

(c) Monitoring of the intermediary service organization by the Division;

(d) The assessment of monetary penalties in an amount set forth in ~~NAC 427A.871~~ *section 59 of these proposed regulations*;

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

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

2. If the Division chooses to impose a particular sanction, it must be applied according to the severity ~~and scope factors established in NAC 427A.861 to 427A.865, inclusive~~ *of the deficiency*.

Sec. 49 Sanctions applied pursuant to ~~NAC 427A.840 to 427A.871,~~ *section 36 of these proposed regulations to section 59 of these proposed regulations*, inclusive, 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. 50 1. The Division will give notice of a sanction to the holder of a certificate by certified mail as required pursuant to ~~NRS 427A.733~~ *section 19 of Senate Bill 51 of the 2013 Legislative Session*.

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 Division may appoint a temporary manager to remove the threat.

3. The Division 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. 51 1. The Division may apply one or more sanctions on the basis of violations found during surveys or investigations of complaints conducted by the Division.

2. Violations must be reported to the intermediary service organization. ~~and~~ *The intermediary service organization must notify* 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 Division pursuant to the provisions of ~~[NAC 427A.861 to 427A.865]~~ *section 52 of these proposed regulations to section 53 of these proposed regulations*, inclusive.

3. Any violation for which a severity ~~{and-scope}~~ score is not specified is presumed to be a de minimis violation.

Sec. 52 In determining the sanctions to be imposed, the Division will consider the severity ~~{and-scope}~~ of the violations according to the classifications of severity ~~{and-scope}~~ described in ~~[NAC 427A.861 to 427A.865]~~ *section 53 of these proposed regulations*, inclusive.

Sec. 53 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 or her 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 or her 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 or her 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 or her 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 or her 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. 54 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. 55 The Division will 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 or her behalf; and
2. The severity of the violation.

Sec. 56 After the initial assessment, the Division will 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. 57 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. 58 1. The intermediary service organization shall develop a plan of correction for each violation and submit the plan to the Division for approval within 10 days after receipt of the notice of violations from the Division pursuant to ~~[NAC 427A.859]~~ *section 50 of these proposed regulations*. 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 Division, the Division may direct the intermediary service organization to resubmit a plan of correction or the Division 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 Division within 10 days after receipt of the notice of violations constitutes a separate violation subject to monetary penalties pursuant to ~~[NAC 427A.871]~~ *section 59 of these proposed regulations* with severity ~~[and scope]~~ rated at the same levels as the highest violation identified on the notice of violations.

~~**Sec. 59** [1.— In determining the amount of an initial monetary penalty, the Division will 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.] 1.~~ For initial violations with a severity level of four, an initial monetary penalty of up to \$1,000 per violation may be imposed.

~~[3.] 2.~~ For initial violations with a severity level of three ~~[and a scope level of three]~~, a monetary penalty of up to ~~[\$800]~~ \$400 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-}~~ 3. For initial violations with a severity level of two ~~{and a scope of three}~~, an initial monetary penalty of up to \$200 per violation may be imposed. The payment of this monetary penalty ~~{must}~~ *may* be suspended if the facility has corrected the violations within the time specified in the plan of correction approved by the Division.

~~{6-}~~ 4. Except as otherwise provided in subsection ~~{7}~~ 5, in addition to any monetary penalty imposed pursuant to this section, the Division may impose a monetary penalty of not more than \$10 per client per day for each day the violation continues.

~~{7-}~~ 5. The total monetary penalties imposed by the Division 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.

Undetermined Background Checks

Sec. 60. 1. *If the Central Repository notifies the administrator of, or the person certified to operate, an intermediary service organization that it is unable to complete an investigation pursuant to section 20 of Senate Bill 51 of the 2013 Legislative Session because:*

(a) Additional information is required, the administrator of, or the person certified to operate, the intermediary service organization shall, within 10 working days after receiving the notice from the Central Repository, send a notice to the employee or independent contractor directing the employee or independent contractor to provide the administrator of, or the person certified to operate, the intermediary service organization and the Central Repository with the information or proof that the information cannot be obtained within 30 days after the date on which the notice was sent by the intermediary service organization.

(b) Criminal charges against the employee or independent contractor are pending, the administrator of, or the person certified to operate, the intermediary service organization shall notify the employee or independent contractor that he or she is required to:

(1) Notify the administrator of, or the person certified to operate an intermediary service organization of the date of each court proceeding relating to the charges; and

(2) Provide the Central Repository with any information relating to the final disposition of the charges as soon as the information is available.

2. The administrator of, or the person certified to operate, the intermediary service organization shall terminate the employment of an employee or the contract with an independent contractor who willfully failed to comply with the provisions of this section.

3. Pending the completion of an investigation of an employee or independent contractor of an intermediary service organization for which the Central Repository has provided notice pursuant to subsection 1 that it is unable to complete the investigation for the reasons stated in subsection 1 and during any period in which an employee or independent contractor has to correct information provided by the Central Repository pursuant to section 20 of Senate Bill 51 of the 2013 Legislative Session, the administrator of, or the person licensed to operate, an intermediary service organization shall ensure the safety of its clients by:

(a) Prohibiting the employee or independent contractor from working at the intermediary service organization; or

(b) Requiring the employee or independent contractor to work at the intermediary service organization under direct supervision while caring for a client of the intermediary service organization.

(c) Conducting an investigation into the circumstances of the criminal history record to determine and implement measures the intermediary service organization identifies in order to ensure the safety of its clients if the employee or independent contractor's criminal history record investigation is pending completion or correction cares for clients.

Sec. 61 NAC 427A.800, 427A.803, 427A.804, 427A.805, 427A.806, 427A.807, 427A.808, 427A.809, 427A.810, 427A.813, 427A.815, 427A.816, 427A.817, 427A.818, 427A.819, 427A.820, 427A.821, 427A.822, 427A.823, 427A.824, 427A.825, 427A.826, 427A.827, 427A.828, 427A.829, 427A.830, 427A.831, 427A.832, 427A.833, 427A.834, 427A.835, 427A.8355, 427A.836, 427A.837, 427A.838, 427A.839, 427A.840, 427A.841, 427A.842, 427A.843, 427A.844, 427A.845, 427A.846, 427A.847, 427A.848, 427A.849, 427A.855, 427A.856, 427A.857, 427A.858, 427A.859, 427A.860, 427A.861, 427A.862, 427A.863, 427A.864, 427A.865, 427A.866, 427A.867, 427A.868, 427A.869, 427A.870 and 427A.871 is hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 427A.800 Definitions. (NRS 427A.701, 427A.705) As used in NAC 427A.800 to 427A.871, inclusive, unless the context otherwise requires, the words and terms defined in NAC 427A.803 to 427A.813, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.803 “Certificate” defined. (NRS 427A.701, 427A.705) “Certificate” means a certificate to operate an intermediary service organization issued by the Division pursuant to the provisions of NRS 427A.701 to 427A.745, inclusive, and NAC 427A.800 to 427A.829, inclusive.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.804 “Client” defined. (NRS 427A.701, 427A.705) “Client” means a person with a disability who seeks or receives personal assistance in his or her 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.805 “Division” defined. (NRS 427A.701, 427A.705) “Division” means the Aging and Disability Services Division of the Department of Health and Human Services.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.806 “Intermediary service organization” defined. (NRS 427A.701, 427A.703)

1. “Intermediary service organization” has the meaning ascribed to it in NRS 427A.0291.
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 Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.807 “Managing employer” defined. (NRS 427A.701, 427A.705) “Managing employer” means the person who selects, sets the schedule for and directs the training of a personal assistant.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.808 “Other responsible person” defined. (NRS 427A.701, 427A.705) “Other responsible person” has the meaning ascribed to it in NRS 427A.701.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.809 “Personal assistance” defined. (NRS 427A.701) “Personal assistance” has the meaning ascribed to it in NRS 427A.701.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.810 “Personal assistant” defined. (NRS 427A.701) “Personal assistant” has the meaning ascribed to it in NRS 427A.701.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.813 “Guardian” interpreted. (NRS 427A.701) As used in subparagraph (2) of paragraph (a) of subsection 2 of NRS 427A.701, the Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

Certification

NAC 427A.815 Form of application; submission of fingerprints. (NRS 427A.705, 427A.719)

1. The Division will prescribe the form for an application to apply for a certificate.
2. An applicant for a certificate must submit with his or her application two complete sets of his or her fingerprints and written permission authorizing the Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.816 Application for certificate and renewal: Fees. (NRS 427A.705, 427A.711, 427A.717)

1. An applicant for a certificate must pay to the Division, at the time of application, a nonrefundable fee of \$2,748.
2. An applicant for the renewal of a certificate must pay to the Division, at the time of application for renewal, a nonrefundable fee of \$1,374.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.817 Application for certificate and renewal: Proof of insurance coverage. (NRS 427A.705, 427A.727) An applicant for a certificate and for the renewal of a certificate

must provide to the Division with the initial application for a certificate, with the application for renewal of a certificate and at such other times upon request of the Division, 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.818 Applicability of certificate; specification of primary location; records. (NRS 427A.705, 427A.715)

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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.819 Issuance of provisional certificate. (NRS 427A.723)

1. The Division may issue a provisional certificate to an intermediary service organization pursuant to NRS 427A.723 if the Division determines that the intermediary service organization is substantially, but not fully, in compliance with NRS 427A.701 to 427A.745, inclusive, and NAC 427A.800 to 427A.871, inclusive.
2. A provisional certificate issued pursuant to subsection 1:
 - (a) Expires 90 days after its issuance unless, within the 90-day period, the Division issues a nonprovisional certificate to the intermediary service organization.
 - (b) Is nonrenewable.
3. The Division will provide in writing to each intermediary service organization which is issued a provisional certificate pursuant to subsection 1 the conditions that the intermediary service organization must meet before the Division will issue a nonprovisional certificate.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

Authorized Activities and General Requirements for Operation

NAC 427A.820 Operation of intermediary service organization and agency to provide personal care services in the home. (NRS 427A.701, 427A.727)

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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.821 Duties and responsibilities. (NRS 427A.701, 427A.727)

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 NAC 427A.824;

(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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.822 Personal assistants: Qualifications; maintenance and availability of personnel files. (NRS 427A.701, 427A.727, 427A.735, 427A.737)

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 NAC 427A.824 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 Division, make available to the Division all personnel files, including, without limitation, any personnel files that are maintained electronically.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.823 Personal assistants: Results of reports on criminal history. (NRS 427A.701, 427A.735) 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 427A.735, 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.824 Client to serve as managing employer and provide training to personal assistant; reporting of training to organization. (NRS 427A.701, 427A.727)

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 bloodborne 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.825 Additional training to be provided by intermediary service organization. (NRS 427A.701, 427A.727) An intermediary service organization shall make

available to a personal assistant employed by the intermediary service organization all training required pursuant to NAC 427A.824 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.826 Visits and telephone interviews with clients. (NRS 427A.701, 427A.727)

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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.827 Written statement of services provided to clients. (NRS 427A.701, 427A.727)

1. An intermediary service organization shall provide to each client for his or her 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.828 Discussion of services provided to clients. (NRS 427A.701, 427A.727)

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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.829 Rights of person with a disability receiving services. (NRS 427A.701, 427A.727)

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 or her behalf:

(a) Has the right to select the personal assistant of his or her 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 or her 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 or her behalf must be provided with a written list of the rights set forth in subsection 1.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

Administrative Review and Hearings

NAC 427A.830 Request for administrative review of complaint. (NRS 427A.733)

1. An applicant for a certificate to operate an intermediary service organization or a person who is certified to operate an intermediary service organization may submit a written request to the Administrator or the Administrator's designee for an administrative review of a complaint if the complainant:
- (a) Has a legitimate grievance with any action of the Division in the certification process; and
 - (b) Has not resolved the grievance through informal negotiations with an officer of the Division.
2. Not later than 30 days after the occurrence of the action that is the cause of the grievance of the complainant, a request for an administrative review must be mailed by registered or certified mail, return receipt requested, to the Administrator or the Administrator's designee.
3. A request for an administrative review must include:
- (a) The date of the occurrence of the action which is the cause of the grievance of the complainant;
 - (b) A statement of the complaint, including each issue that the complainant considers relevant to the complaint;
 - (c) A statement of each resolution of the complaint offered by the complainant;
 - (d) Citations to the statutes or regulations, if any, which pertain to the complaint;
 - (e) A statement which supports the position of the complainant;
 - (f) The mailing address and telephone number of the complainant; and
 - (g) The signature of the complainant and the date of the signature.
- (Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.831 Scheduling of administrative review. (NRS 427A.733) The Administrator or the Administrator's designee shall conduct an administrative review at a time

and place which is reasonable for the parties. Unless otherwise scheduled to accommodate the complainant, the Administrator or the designee shall conduct an administrative review within 10 days after the Administrator or the designee receives a request for an administrative review pursuant to NAC 427A.830.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.832 Conduct of administrative review. (NRS 427A.733) An administrative review must be:

1. Conducted informally without attorneys or witnesses.
2. Based on the record available, except that the complainant may, upon the complainant's request, appear and present additional facts.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.833 Issuance of written decision following administrative review. (NRS 427A.733)

1. Not later than 15 days after an administrative review, the Administrator or the Administrator's designee shall issue a written decision, including the findings of fact and conclusions of law concerning the complaint and any appropriate orders.
2. The Division will mail the written decision to the complainant by registered or certified mail, return receipt requested, or a representative of the Division may personally deliver the decision to the complainant and read it to the complainant. If the decision is personally delivered to the complainant, the complainant shall date and sign a copy of the decision as an acknowledgment of the receipt.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.834 Request for hearing. (NRS 427A.733)

1. Not later than 15 days after receipt of a written decision on a complaint, a complainant may submit a written request to the Administrator for a hearing on the complaint. The request must be mailed to the Administrator by certified or registered mail, return receipt requested.
2. The written request for a hearing must include a copy of the original complaint filed by the complainant.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.835 Hearings: Scheduling; notice. (NRS 427A.733)

1. Not later than 30 days after the Administrator receives a written request for a hearing, a hearing officer appointed by the senior hearing officer of the Hearings Division of the Department of Administration shall conduct a hearing at a time and location that is reasonable for the parties. The hearing officer must not have any personal involvement in the complaint.
2. Not less than 10 days before the date of the hearing, the Aging and Disability Services Division will, in accordance with NRS 233B.121, provide to all parties notice of the time, date and place of the hearing.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.8355 Hearings: Representation; evidence; rights of parties. (NRS 427A.733)

1. The complainant may be represented at the hearing by an attorney or another person designated by the complainant.

2. The hearing officer is not bound by the technical rules of evidence. Decisions concerning the admissibility of evidence must be made in accordance with NRS 233B.123.

3. Each party must be granted the opportunity to present the party's case, examine and cross-examine witnesses, and rebut evidence.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.836 Resolution of complaint. (NRS 427A.733) Unless otherwise provided by statute, a complaint may be resolved by arbitration, mutual agreement of the parties, settlement, consent decree or default of a party.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.837 Final decision of hearing officer; request for judicial review. (NRS 427A.733)

1. A final decision by a hearing officer on a complaint must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact must include a statement of the facts which support the findings.

2. Not more than 30 days after a final decision is made, a party may appeal the final decision of the hearing officer and request judicial review pursuant to NRS 233B.130 to 233B.150, inclusive.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.838 Record of hearing. (NRS 427A.733) The record of the hearing must include:

1. The transcript of the oral testimony provided at the hearing;
2. All pleadings and motions filed by the parties;
3. Any rulings made by the hearing officer, including rulings on offers of proof;
4. Evidence that was admitted;
5. Facts which were officially noticed by the hearing officer; and
6. Any other decision, opinion or report of the hearing officer.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

NAC 427A.839 Provision of transcript of oral proceedings of hearing. (NRS 427A.733) Upon request of a party, the Division will provide a transcript of the oral proceedings of the hearing. The Division may require payment of the cost incurred for providing the transcript.

(Added to NAC by Aging & Disability Services Div. by R197-09, eff. 7-22-2010)

Administrative Sanctions

NAC 427A.840 Definitions. (NRS 427A.731) As used in NAC 427A.840 to 427A.871, inclusive, unless the context otherwise requires, the words and terms defined in NAC 427A.841 to 427A.849, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.841 "Ban on enrollment" defined. (NRS 427A.731) "Ban on enrollment" means a prohibition on the provision of services to clients who are newly enrolled.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.842 “Cluster” defined. (NRS 427A.731) “Cluster” means a violation that involves the same or similar kinds of services as one or more other violations.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.843 “Compliance” defined. (NRS 427A.731) “Compliance” means that no major violation is present and that effective steps have been taken to resolve all violations.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.844 “De minimis violation” defined. (NRS 427A.731) “De minimis violation” means a violation rated at a severity level of one or two and at a scope level of one or two.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.845 “Major violation” defined. (NRS 427A.731) “Major violation” means a violation with a severity and scope score of five or more.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.846 “Plan of correction” defined. (NRS 427A.731) “Plan of correction” means a plan developed by the intermediary service organization and approved by the Division 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.
- (Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.847 “Resurvey” defined. (NRS 427A.731) “Resurvey” means a survey conducted after the initial survey to evaluate compliance with a plan of correction.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.848 “Severity and scope score” defined. (NRS 427A.731) “Severity and scope score” means the sum of the numerical levels of severity and scope assigned to a violation.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.849 “Subsequent violation” defined. (NRS 427A.731) “Subsequent violation” means a violation found on a resurvey.
(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.855 Imposition of sanctions generally. (NRS 427A.731)

1. The Division will 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 NAC 427A.861 to 427A.865, inclusive.
2. The Division 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 Division will minimize the time between identification of a violation and the imposition of a sanction for the violation.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.856 Minimum sanction to be imposed. (NRS 427A.731) The Division will 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 NAC 427A.861 to 427A.865, inclusive. More than one of these sanctions may be imposed at the discretion of the Division.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.857 Available sanctions. (NRS 427A.719, 427A.729, 427A.731)

1. The Division may apply one or more sanctions as provided in NRS 427A.729, including, without limitation:

- (a) The imposition of a plan of correction as directed by the Division;
- (b) The imposition of a ban on enrollment;
- (c) Monitoring of the intermediary service organization by the Division;
- (d) The assessment of monetary penalties in an amount set forth in NAC 427A.871;
- (e) The requirement that the intermediary service organization be managed temporarily by a person appointed by the Division; and
- (f) The denial, suspension or revocation of the certificate.

2. If the Division chooses to impose a particular sanction, it must be applied according to the severity and scope factors established in NAC 427A.861 to 427A.865, inclusive.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.858 Duration of sanctions. (NRS 427A.731) Sanctions applied pursuant to NAC 427A.840 to 427A.871, inclusive, may be imposed until substantial compliance is achieved or, if compliance is not achieved, until the day before termination of the certificate becomes effective.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.859 Notice of sanction; appointment of temporary manager; ban on enrollment or suspension of certificate authorized in certain circumstances. (NRS 427A.729, 427A.731)

1. The Division will give notice of a sanction to the holder of a certificate by certified mail as required pursuant to NRS 427A.733.

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 Division may appoint a temporary manager to remove the threat.

3. The Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.860 Imposition of one or more sanctions; reporting of violations; presumption of de minimis violation. (NRS 427A.731)

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

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 Division pursuant to the provisions of NAC 427A.861 to 427A.865, inclusive.

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

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.861 Severity and scope of violations to be considered in determining sanctions to be imposed. (NRS 427A.731) In determining the sanctions to be imposed, the Division will consider the severity and scope of the violations according to the classifications of severity and scope described in NAC 427A.861 to 427A.865, inclusive.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.862 Scope of violations: Survey of organization; sampling of clients; use of scope relating to one client authorized. (NRS 427A.731)

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:

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

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 Division may review more than the minimum number of clients and determine the scope based on the number of clients actually reviewed.

4. If the Division investigates a specific complaint relating to a client, the Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.863 Scope of violations: Use of scope; basis for assessment. (NRS 427A.731)

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.
- (Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.864 Scope of violations: Criteria for evaluation. (NRS 427A.731)

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 Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.865 Severity of violations: Use of severity scale; basis for assessment; criteria for evaluation. (NRS 427A.731)

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 or her 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 or her 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 or her 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 or her 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 or her 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.866 Subsequent violation on resurvey: Rebuttable presumption; imposition of sanction. (NRS 427A.731) 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.867 Determination of sanctions: Initial assessment. (NRS 427A.731) The Division will 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 or her behalf; and

2. The severity of the violation.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.868 Determination of sanctions: Secondary factors to be considered. (NRS 427A.731) After the initial assessment, the Division will 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.869 Determination of sanctions: Basis for selection; restrictions upon service and monetary penalties presumed to be most effective. (NRS 427A.731) 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.870 Plan of correction: Development by intermediary service organization; authority of Division when plan is not acceptable; effect of failure to submit plan. (NRS 427A.731)

1. The intermediary service organization shall develop a plan of correction for each violation and submit the plan to the Division for approval within 10 days after receipt of the notice of violations from the Division pursuant to NAC 427A.859. 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 Division, the Division may direct the intermediary service organization to resubmit a plan of correction or the Division 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 Division within 10 days after receipt of the notice of violations constitutes a separate violation subject to monetary penalties pursuant to NAC 427A.871 with severity and scope rated at the same levels as the highest violation identified on the notice of violations.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)

NAC 427A.871 Monetary penalties: Determination of initial penalty; daily penalties; maximum total penalties. (NRS 427A.729, 427A.731)

1. In determining the amount of an initial monetary penalty, the Division will 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 Division.

6. Except as otherwise provided in subsection 7, in addition to any monetary penalty imposed pursuant to this section, the Division 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 Division 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.

(Added to NAC by Bd. of Health by R167-07, eff. 1-30-2008)