

**PROPOSED REGULATION OF THE  
STATE BOARD OF HEALTH**

**LCB File No. R105-13**

November 5, 2013

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

AUTHORITY: §§1 and 2, NRS 449.4327; §3, NRS 449.4327, 449.4336 and 449.4337.

A REGULATION relating to intermediary service organizations; revising provisions relating to fees for an application for a certificate to operate an intermediary service organization; repealing certain provisions relating to administrative review and sanctions; and providing other matters properly relating thereto.

**Section 1.** NAC 427A.816 is hereby amended to read as follows:

427A.816 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.

**Sec. 2.** NAC 427A.822 is hereby amended to read as follows:

427A.822 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; *and*

~~(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.

**Sec. 3.** NAC 427A.820, 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 are hereby repealed.

---

---

**TEXT OF REPEALED SECTIONS**

---

---

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**427A.845 “Major violation” defined. (NRS 427A.731)** “Major violation” means a violation with a severity and scope score of five or more.

**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.

**427A.847 “Resurvey” defined. (NRS 427A.731)** “Resurvey” means a survey conducted after the initial survey to evaluate compliance with a plan of correction.

**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.

**427A.849 “Subsequent violation” defined. (NRS 427A.731)** “Subsequent violation” means a violation found on a resurvey.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.