DEPARTMENT OF HUMAN SERVICES

AGING AND PEOPLE WITH DISABILITIES DIVISION

OREGON ADMINISTRATIVE RULES

CHAPTER 411

DIVISION 58

LONG TERM CARE REFERRAL SERVICES

411-058-0000 Definitions

(1) "Applicant" means a person that has submitted an application and disclosure statement to register as a referral agent.
(2) "Client" (or "Consumer") means an individual who seeks a long term care referral for the individual or for another individual.
(3) "Compensation" means any substantive financial or material gain from a facility in an amount of $1,000 or more during a calendar year in exchange for providing long term care referral services, including but not limited to gain by salary, benefits, commission, payment, gift cards, donations, discounts, and other items of value that result in financial or material gain to the person providing long term care referral services.
(4) "Department" means the Department of Human Services.
(5) "Disclosure" means a written disclosure statement provided by the referral agent to the client as defined in OAR 411-058-0030.
(6) "Employee" means an individual employed by a referral agent and who is compensated by an hourly wage, salary or commission.
(7) "Facility" means:
    a) A long term care facility as defined in ORS 442.015;
    b) A residential care facility as defined in ORS 443.400, including but not limited to an assisted living facility and a facility marketed as a memory care community;
    c) An adult foster home as defined in ORS 443.705; or
    d) A continuing care retirement community as defined in ORS 101.320.

(8) "Independent Contractor" means an individual who is compensated for long term care referrals by a referral agent and is not otherwise compensated by an hourly wage or salary.

(9) "Long Term Care Referral" means a referral to a facility for which the referral agent receives compensation of any kind from the facility.

(10) "Person" means an individual, corporation, association, firm, partnership, limited liability company, and joint stock company, as well as any other entity defined in ORS 174.100.

(11) "Placement Information" means any information a referral agent collects from a client or the subject of placement, including but not limited to name, electronic mail address, phone number, zip code, medical history, income, financial, and information about necessary assistance for activities of daily living or the reasons for seeking long term care.

(12) "Referral Agent" means a person as defined in section (10) of this rule that provides long term care referrals. A "Referral Agent" does not include:

a) A facility or its employees unless the facility or its employees received compensation ~~of any kind~~ for a long term care referral;
b) A resident or patron of a facility who refers a client to a facility and receives a discount or other remuneration from the facility; or
c) A public body as defined in ORS 174.109.

(13) "Registry" means a list of referral agents registered with the Department in accordance with OAR 411-058-0010.

(14) "Subject of Placement" means the individual to be placed with a facility through a long term care referral.

(15) "Subsequent Facility" means a facility in which:

a) The subject of placement enters a facility for which the subject of placement is referred by a first referral agent, but subsequently leaves that facility; and
b) A new referral agent refers the subject of placement to a subsequent facility.

(16) "Subsequent Move" means a move from one facility to another facility after a client notifies the referral agent in writing that the client wishes to use the services of another referral agent in the future for referral to another facility.

411-058-0010 Registration Required

(1) A ~~R~~referral agent~~s~~ who provides long term care referrals to clients must be registered with the Department.

(2) A referral agent must be registered with the Department before:

a) Entering into an agreement to provide long term care referral services to a client;

b) Soliciting prospective clients and facilities; or

c) Collecting compensation from a facility for placement of a client.

(3) Within 30 calendar days of receiving compensation as defined by these rules in a calendar year, applicants must apply for registration with the Department on forms prescribed by the Department as described in OAR 411-058-0020. The application must include a disclosure statement as described in OAR 411-058-0030.

(4) The Department shall issue a notice of filing to the applicant within ten business days after receipt of the completed application for registration of a new referral agent and the initial registration fee.

(5) The Department shall issue a certificate of registration to the applicant or reject~~ing~~ the registration within 60 days of the notice of filing.

(6) The Department shall enter an order registering the referral agent if the Department determines that the requirements of these rules and Oregon Laws Chapter 656 (2017) have been met.

(7) The Department shall notify the applicant that the application for registration must be corrected within 30 days if the Department determines that any of the requirements of these rules and Oregon Laws Chapter 656 (2017) have not been met.

a) The Department may enter an order rejecting the registration if the applicant does not meet the requirements within 30 days, unless the applicant and the Department agree on an extension of time. The order shall include the findings of fact upon which the order is based.

b) The applicant may petition for reconsideration and request a contested case hearing pursuant to ORS Chapter 183.

411-058-0020 Registration

(1) APPLICATION FOR REGISTRATION:

a) Application for registration must be made to the Department on forms prescribed by the Department. The application must include:
    A. The registration fee as described in section (2) of this rule;
    B. The disclosure statement as described in OAR 411-058-0030;
    C. General Liability Insurance requirements, as described in OAR 411-058-0060; and
    D. Background Check Requirements, as described in OAR 411-0580-0070.
b) The application is not considered to be complete until the Department receives all required information and the registration fee.
c) The application for registration must be signed by the individual responsible for the registration.
d) Registration must be renewed with the Department every two (2) years.

(2) REGISTRATION FEE:
a) The initial application for registration must be accompanied by a fee of $750.
b) After the initial registration, the subsequent renewal fee shall be $500.

(3) ISSUANCE OF REGISTRATION:
a) The Department shall issue a certificate of registration once the applicant has:
    A. Submitted a completed application, disclosure statement, proof of general liability insurance requirements, proof of background check requirements, and other required information; and
    B. Met all other requirements as described in Oregon Laws Chapter 656 (2017) and these rules.
b) The certificate of registration shall identify the person as a referral agent and include:
    A. The name and address of the person;
    B. The effective date of the registration; and

C. The following statement in a prominent location and typeface: "A certificate of registration does not constitute recommendation or endorsement of the referral agent by the Department of Human Services, and this registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement."

c) The person must use a copy of the certificate of registration as the cover page for the disclosure statement as described in OAR 411-058-0030.

411-058-0030 Disclosure Statement

(1) All applicants must file a disclosure statement with the Department upon initial application and for every biannual renewal thereafter. The disclosure statement may be on forms approved and distributed by the Department.

(2) DISCLOSURE STATEMENT: The written disclosure statement must be conspicuous, provided in clear language and include:

a. A description of the long term care referral to be provided by the referral agent, including the length of any contract the referral agent has with a facility regarding placement information about the client or the subject of placement;

b. The referral agent's contact information, including address and phone number;

c. The referral agent's privacy policy;

d. A statement of whether the referral agent provides referrals only to facilities with which the agent has an existing contract; and

e. A statement of whether the referral fees for the long term care referral will be paid to the referral agent by the facility.

~~f. An acknowledgement of receipt signed by the client.~~

(3) The referral agent must maintain records documenting the provision of the disclosure statement to the client for a duration prescribed in OAR 411-058-0050.

~~(3)~~(4) To amend a disclosure statement, a referral agent must file all amended documents and new materials with the Department.

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~~(4)~~(5) The disclosure may be made orally if the referral agent makes an audio recording of the disclosure with consent of the client and thereafter provides the client with a written disclosure.

411-058-0040 Prohibited Activities

(1) A referral agent may not share a client's placement information with or sell a client's placement information to a facility or marketing affiliate without obtaining affirmative consent from the client for each instance of sharing or selling the information.
(2) A referral agent may not refer a client to a facility in which the referral agent or an immediate family member of the referral agent has an ownership interest.
(3) A referral agent may not contact a client who has requested in writing that the referral agent stop contacting the client.

411-058-0050 Client Records

(1) A referral agent must provide a client access to the client's records retained by the referral agent within 30 calendar days of the client's request of their records.
(2) A referral agent must maintain a client's records for a minimum of three years after the client is no longer receiving services from that referral agent.

411-058-0060 Special Provisions

(1) If a referral agent maintains a website, the website must contain a link to any state agency website listing complaints concerning facilities.
(2) If the referral agent does not maintain a website, the referral agent shall notify clients in writing of state agency website addresses listing complaints concerning facilities.
~~(2)~~
(3) If a client is referred to a facility and the referral agent has received compensation from the facility for the referral, the client may notify the referral agent in writing that the client wishes to use the services of another referral agent in the future for referral to another facility in a

subsequent move. After receiving this notice in writing, the first referral agent may not receive compensation from another facility in a subsequent move for any referral made before receiving the notice.

(4) A referral agent must include in any contract with a facility provisions prohibiting the referral agent from collecting compensation from a facility when the facility is a subsequent facility. A facility is a subsequent facility when:
   a) The subject of placement enters a facility to which the subject of placement is referred by a first referral agent, but subsequently leaves that facility; and
   b) A new referral agent refers the subject of placement to a subsequent facility.

(5) When a referral is made to a subsequent facility for a subject of placements by a new referral agent as described in section (4) of this rule, the new referral agent must present evidence to the subsequent facility that the first agent is not entitled to compensation.

411-058-007~~060~~ General Liability Insurance Requirements

(1) An applicant must demonstrate that it maintains at least $1 million in general liability insurance, as described in OAR 411-058-0020.

(2) A referral agent must maintain at least $1 million in general liability insurance throughout its entire period of certificate of registration.

(3) A referral agent must demonstrate that it maintains at least $1 million in general liability insurance upon renewal of registration.

411-058-0080 Background Check Requirements

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(1) Any referral agent, and any employee of a referral agent who comes into direct contact with clients must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved. Direct contact with clients includes:
   a) In-person contact with clients;

b) Telephone contact with clients;
c) E~~mail or other e~~lectronic communication~~and social media contact~~ with clients;
d) Contact with clients through written communication via US mail, other delivery services, or facsimile; or
e) Direct access to client-specific information, including but not restricted to a client's medical, financial, long term care needs, and contact information.

(2) Each referral agent and employee described in section (1) of this rule shall have a background check review described in section (1) of this rule upon the biennial renewal of the referral agent.
(3) The Department reserves the right to conduct background checks more frequently.
(4) The referral agent must inform the Department that the referral agent or its employee as defined in section (1) of this rule within 14 days of being arrested, cited for, or convicted of any potentially disqualifying crimes under OAR 125-007-0270 and potentially disqualifying conditions under 407-007-0290.

411-058-0090 Administrative Sanctions

(1) An administrative sanction may be imposed by the Department for non-compliance with these rules. An administrative sanction includes one or more of the following actions:
a) Civil penalties; or
b) Denial, suspension, revocation, or refusal to renew registration.

(2) If the Department imposes an administrative sanction, it shall serve a notice of administrative sanction upon the referral agent personally or by certified mail.
(3) The notice of administrative sanction shall state:
a) Each sanction imposed;
b) A short and plain statement of each reason that constitutes a violation;
c) Each statute or rule violated;
d) A statement of the referral agent's right to a contested case hearing;

e) A statement of the authority and jurisdiction under which the hearing is to be held;
f) A statement that the Department's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of provide a prima facie case; and
g) A statement that the notice becomes a final order upon default if the referral agent fails to request a hearing within the specified time.

(4) If an administrative sanction is imposed for reasons other than abuse, it shall be preceded by a hearing if the referral agent requests the hearing in writing within 60 days after the receipt of notice.

(5) The Department may immediately suspend, revoke or refuse to renew a Certificate of Registration for reason of abuse of a client. The referral agent may request a review of the decision by submitting a request, in writing, within ten (10) days of the notice and order of suspension, revocation or non-renewal.

(6) Within ten (10) days of receipt of the referral agent's request for a review, the Department director or designee shall review all material relating to the allegation of abuse and to the suspension, revocation or non-renewal, including any written documentation submitted by the referral agent within that time frame. The director or designee shall determine, based on a review of the material, whether to sustain the decision. If the director or designee does not sustain the decision, the suspension, revocation or refusal to renew shall be rescinded immediately. The decision of the director or designee is subject to a contested case hearing under ORS 183.310 to 183.550 if requested within 90 days.

(7) The Department may also deny, suspend, revoke or refuse to renew a registration where it finds:
a) There has been substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to rights of clients receiving the services under these rules;
b) The application or renewal for the Certificate of Registration contains fraudulent information or material misrepresentations;

c) The referral agent fails to comply with a final order of the Department to correct a violation of these rules for which an administrative sanction has been imposed; or
d) The referral agent fails to comply with a final order of the Department imposing an administrative sanction.

(8) If a referral agent fails to request the hearing within the 60 days, or fails to request a review of a finding of abuse within ten (10) days, the notice of administrative sanction shall become a final order of the Department by default.

411-058-0100 Civil Penalties

(1) Civil penalties, not to exceed $XXX per violation, may be assessed for a~~n~~ person operating as a referral agent without registration.

(2) Any civil penalty imposed under this section shall become due and payable when the person incurring the penalty receives a notice in writing from the Department. The notice shall be sent by registered or certified mail and shall include:
a) A reference to the particular sections of statute, rule or order involved;
b) A short and plain statement of the matters asserted or charged;
c) A statement of the amount of penalty or penalties imposed; and
d) A statement of the right to request a hearing.

(3) The person to whom the notice is addressed shall have ten days from the date of mailing in which to make writing application for a hearing.

(4) All hearings shall be conducted according to the applicable provisions of ORS 183.310 to 183.550.

(5) If the person notified fails to request a hearing within the time frame specified; or if after a hearing the person is found to be in violation of a statute, rule, or order, an order may be entered assessing a civil penalty.

(6) Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person.

(7) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.