

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

Oregon Department of Human Services (ODHS) Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
Aging and People with Disabilities 500 Summer Street NE, E-02 Salem, OR 97301		
Kristina Krause	apd.rules@dhsosha.state.or.us	503-339-6104
Rules Coordinator	Email	Telephone
Ann Birch	ann.birch@dhsosha.state.or.us	971-345-1838
Filing Contact	Email	Telephone

FILING CAPTION
(Must be 15 words or fewer)

APD: Amending Long Term Care Referral Services Rule to Strengthen Program Integrity

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsosha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **08/12/2022 at 5 p.m.**

HEARING WILL BE CONDUCTED VIRTUALLY

Hearing Date: **07/26/2022**
Hearing Time: **10:00 a.m. – 11:00 a.m.**

Join ZoomGov Meeting:
<https://www.zoomgov.com/j/1613476738?pwd=YkNRRDFBaERwRk85Q1N1R3FoK3Vxdz09>

Meeting ID: 161 347 6738
Passcode: 490387

Join by Phone:
+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)

Meeting ID: 161 347 6738
Passcode: 490387

HEARING NOTES: To provide oral testimony during this hearing, please contact apd.rules@dhsoha.state.or.us to sign-up ahead of time. If you wish to provide comment, please connect or call in no later than 15 minutes after the start time listed.

Everyone has a right to know about and use ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Ann Birch at 971-345-1838, ann.birch@dhsoha.state.or.us, 711 TTY, or apd.rules@dhsoha.state.or.us, at least five business days before the hearing.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

ADOPT:

411-058-0085; 411-058-0110

AMEND:

411-058-0000; 411-058-0010; 411-058-0020; 411-058-0030; 411-058-0040;
411-058-0050; 411-058-0060; 411-058-0070; 411-058-0080; 411-058-0090

REPEAL:

411-058-0100

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services, Aging and People with Disabilities Program is proposing to permanently amend rules in OAR chapter 411, division 058 relating to Long Term Care Referral Services.

Proposed changes may also be made to OAR 411-058-0000 through 411-058-0110 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

411-058-0000 Definitions

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to proposed language and updating and adding language “Oregon” to Department of Human Services and the acronym “APD” to reference Aging and People with Disabilities Program.
- Proposed language defining “Certificate of Registration” as the document an agent receives after completing the Department approved Long Term Care Referral Registry requirements. Definition includes statement that a Certificate of Registration does not constitute recommendation or endorsement of the referral agent by the Oregon Department of Human Services, and a registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement.
- Proposed language removing “Consumer” from definition of “Client.”
- Proposed language defining “Consent” to mean the person must act freely and voluntarily and have knowledge of the nature of the actor or transaction involved.
- Proposed language removing “of any kind” from the definition of “Long Term Care Referral” compensation.
- Proposed language removing, “...unless the facility or its employees received compensation for a long term care referral as part of what the definition of a “Referral Agent” does not include.”
- Proposed language indicating the employees of a referral agency are not considered a “Referral Agent.”
- Proposed language removing definitions of “Subsequent Facility” and “Subsequent Move.”

411-058-0010 Registration Required

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to proposed language.
- Proposed language indicating a referral agent must receive a “Certificate of Registration” prior to soliciting prospective clients or facilities; prior to entering into an agreement with clients; prior to providing clients with long term care referral services and before collecting compensation from a facility for client placement.
- Proposed language requiring referral agents who maintain a website to include a link to the Oregon Licensed Long Term Care Settings Search website <https://ltclicensing.oregon.gov/>; agents who do not maintain a website are required to notify clients in writing about the Oregon Licensed Long Term Care settings website.

- Proposed language requiring the Department to notify applicants of receipt of an application for Certificate of Registration within 10 calendar days.
- Proposed language requiring the Department to notify applicants of a decision to approve or deny a Certificate of Registration within 60 calendar days after receiving a completed application.

411-058-0020 Registration

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to proposed language.
- Proposed language requiring a referral agent to submit a signed disclosure statement to the Department.
- Proposed amended language specifying that a Certificate of Registration includes language identifying the person or entity as a referral agent, doing business as (DBA), address of the person or entity, the registration date of issue and expiration, and that the certificate does not represent an endorsement of the referral agent by the Department nor accuracy or completeness included in a disclosure statement.
- Proposed amended language indicating a referral agent who receives compensation as defined by 411-058-0000(4) and who has not been issued a “Certificate of Registration” must apply for registration within 30 calendar days of receiving compensation.

411-058-0030 Disclosure Statement

- Proposed amended language specifying applicants file a disclosure statement with the Department when submitting a new registration or initial application, with every registration renewal and when amended.
- Proposed amended language specifying the disclosure statement be written in clear language, be prepared in a minimum 12-point font, include the referral agent name, email address and website, a link to the agent’s privacy policy, and a statement whether the agent provides referrals only to facilities with which the agent has an existing business contract.
- Proposed amended language specifying if a referral agent does not have a website, the disclosure statement must include information providing the Oregon Licensed Long Term Care Settings search website <https://ltclicensing.oregon.gov/listing> complaints concerning facilities.
- Proposed amended language adding that disclosure may be made orally “first” and the referral agents must retain proof of either oral or written disclosure and make it available to the Department.

411-058-0040 Prohibited Activities

- Proposed amended language adding referral agents may not contact clients who have requested the referral agent stop contacting them via facsimile, electronic mail or other electronic means of written communication.

411-058-0050 Client Records

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to proposed language.
- Proposed amended language specifying referral agent shall maintain client records sufficient to document compliance with ORS 443.370 to 443.376 for a period of three years from the date of any disclosure statement given to a client.

411-058-0060 Subsequent Facility

- Housekeeping to amend rules for consistency and to clarify information. These amendments include grammatical changes, renumbering rule references due to proposed language.
- Proposed amended language renaming section from Special Provisions to Subsequent Facility.
- Proposed amended language specifying a 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 the first referral agent receives the notice, they may not receive compensation from another facility in a subsequent move for any referral made before receiving the notice.
- Proposed amended language specifying 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 as described in this section

411-058-0070 General Liability Insurance Requirements

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to proposed language.
- Proposed amended language specifying an applicant must demonstrate that it maintains "\$1,000,000 per occurrence" in general liability insurance.
- Proposed amended language specifying an applicant must demonstrate that it maintains "\$1,000,000 per occurrence in commercial general liability insurance throughout the entire period of registration on an uninterrupted basis."

411-058-0080 Background Check Requirements

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to amended ODHS Background Check Unit OARs.
- Proposed amended language adding agency owner, operator to the list of those who must “complete” a “criminal” background check “every 24 months” when providing long term care client referrals.
- Proposed amended language updating reference to National Association of Professional Background Screeners to current name “Professional Background Screening Association.”

411-058-0085 Mandatory Abuse Reporting

- Proposed adoption of language specifying referral agents are mandatory reporters under ORS 124.050 and subject to the abuse reporting requirements of ORS 124.060.
- Proposed adoption of language adding that a mandatory reporter must report if they have reasonable cause to believe an elderly person in any setting has suffered abuse as described in ORS 124.050.
- Proposed adoption of language adding that mandatory reporters must immediately report abuse and suspected abuse to 1-855-503-7233, as required by ORS 124.065.
- Proposed adoption of language adding that anyone who, in good faith and with reasonable grounds, reports abuse or suspected abuse shall have immunity from any criminal or civil liability, as stated in ORS 124.075.

411-058-0090 Administrative Sanctions and Civil Penalties

- Housekeeping to amend rules for consistency and to clarify information. These amendments include minor grammatical changes, renumbering rule references due to proposed language.
- Proposed amended language combining and renaming section from “Administrative Sanctions” to “Administrative Sanctions and Civil Penalties”.
- Proposed amended language indicating the Department may impose an administrative sanction or a civil penalty against a referral agent for noncompliance with these rules as follows:
 - Substantial failure to comply with these rules or where there is substantial noncompliance 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.
- The application or renewal for the Certificate of Registration contains fraudulent information or material misrepresentations.

- 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
- The referral agent fails to comply with a final order of the Department imposing an administrative sanction.
- The referral agent has been substantiated for abuse after a report issued under ORS 124.071 or 441.650.

411-058-0100 Civil Penalties

- It is proposed that the amended content of this rule will be moved and combined with 411-058-0090 with the amended title, “Administrative Sanctions and Civil Penalties.”
- It is proposed that this rule will be repealed.

411-058-0110 Notice and Hearing Rights

- Proposed adoption of language adding section named Notice and Hearing Rights indicating a notice of administrative sanction or civil penalty shall follow procedures established by ORS 183.745 “Civil Penalty Procedures” and be sent by mail, certified mail, or electronic mail.
- These rules propose to adopt language consistent with ORS 188.745 “Civil Penalty Procedures.”

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

These rules require agents and other professionals who receive compensation for providing long term care referrals to register with ODHS every two years. Referral agents must meet certain disclosure requirements, including providing consumers with information about their compensation practices and whether they share a consumer’s personal information. Referral agents must demonstrate to ODHS they meet program requirements. The rules became effective in 2019 and the Department decided to review and revise the rules in place as necessary for improved consumer protection and program integrity.

Proposed changes may also be made to OAR 411-058-0000 through 411-058-0110 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

Documents Relied Upon, and where they are available:

HB 2661 (2017 Regular Session)

Requires long term care referral provider to be registered with Department of Human Services

<https://olis.oregonlegislature.gov/liz/2017R1/Downloads/MeasureDocument/HB2661/Enrolled>

EQUITY IMPACT STATEMENT

HB 2993 (2021 Regular Session)

The rule impacts registered long term care referral agents, clients (consumers) of referral services and long term care referral facilities. Oregon long term care referral agents are required to register with the state if the agent is compensated by the facility for client placement services. These rules primarily apply to referral agents who are compensated by a licensed long term care facility after making a client placement referral.

The rules outline registration requirements for long term care referral agents and include limited guidance for the provision of client services. The rules inform agents regarding the agent client business relationship. For example, if a client informs an agent in writing that they no longer want to do business with the agent after they have received placement assistance with the agent, the client can work with a new agent when they require placement assistance with a new move.

The racial groups who are affected by the rule include all racial groups who contact and work with a registered long term care referral agent for fee free placement assistance at an Oregon licensed long term care facility. The racial groups most likely to be concerned about issues in the rules are the same racial groups as those who are affected by the rules; with clients and consumers likely most affected.

The racial group most likely to be affected by issues in the rules are clients (consumers) and their representatives. As consumers of long term care referral services, it is incumbent on the consumer to be knowledgeable about the requirement they notify an agent when they no longer want to do business with them and only after they have received placement services. This aspect of the rule does not provide a consumer with the option to freely change long term care agent placement referral services if they change their mind and prefer doing business with a different long term care referral agent.

Rule Advisory Committee meetings were held via zoom on 9/2/2020 and 12/9/2020. A third RAC was conducted via email distribution of proposed amended OARs on 3/10/2021. Interested persons were provided an opportunity to review and comment through 3/29/2021. We plan to continue working on a communication engagement strategy to include the long term care referral agent consumer population. We offer and are prepared to provide alternate languages and formats to engage all interested parties.

The challenge with better engaging affected communities is identifying clients and consumers, informing them of opportunities to participate in RACs and encouraging their input regarding these rules. Plans to mitigate potential negative impact to racial equity or racially/ethnically specific communities include improved community engagement and strategies to increase the visibility/awareness of these consumer protection rules.

Fiscal and Economic Impact:

The Department anticipates minimal fiscal and economic impact to the Department and certain large to small business that provide long term care referral services to clients. The Department anticipates no fiscal and economic impact to clients, other state agencies, units of local government, providers and members of the public.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates minimal fiscal and economic impact on the Oregon Department of Human Services to implement the new civil penalties section of the rule.

Units of Local Government: The Department estimates no fiscal or economic impact on local government units.

Consumers: The Department estimates no fiscal or economic impact on consumers or clients of long term care referral services.

Providers: The Department estimates some potential fiscal or economic impact for long term care referral agents if they are sanctioned with civil penalties. Due to this being a new area of regulation for the Department, the Department is unable to estimate the exact economic or fiscal impact on providers currently.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

In addition to two large businesses that operate in many states, these rules will have a minimal fiscal and economic impact on the other 59 long term care referral agents/ referral agencies that operate as small businesses and individual proprietorships in the State of Oregon.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s):

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

Describe how small businesses were involved in the development of these rule(s)?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Was an Administrative Rule Advisory Committee consulted? Yes or No?

If not, why not?

Yes.

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities

Signature

06/08/2022

Date

OREGON DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES PROGRAMDIVISION
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 58

LONG TERM CARE REFERRAL SERVICES

411-058-0000 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 058:

(1) "Applicant" means a person that has submitted an application and disclosure statement to register as a referral agent.

(2) "Certificate of Registration" means the document a referral agent or agency receives when the agent has completed the Department approved Long Term Care Referral Registry requirements. A Certificate of Registration does not constitute recommendation or endorsement of the referral agent by the Oregon Department of Human Services, and a registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement.

~~(23)~~ "Client" or "~~Consumer~~" means an individual who seeks a long term care referral for the individual or for another individual.

~~(34)~~ "Compensation" means any substantive financial or material gain from one or more facilities in a total amount of \$1,000 or more during a calendar year in exchange for providing long term care referral services to those facilities, 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.

(5) "Consent" means the person must act freely and voluntarily and have knowledge of the nature of the actor or transaction involved.

(46) "Department" means the Oregon Department of Human Services, Aging and People with Disabilities Program (APD).

(57) "Disclosure" means a written disclosure statement provided by the referral agent to the client as defined in OAR 411-058-0030.

(68) "Employee" means an individual employed by a referral agent and who is compensated by an hourly wage, salary or commission.

(79) "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.

(810) "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.

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

(1012) "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.

(1113) "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~~14) "Referral Agent" means a person as defined in section (~~10~~12) 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 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; ~~or~~

(d) The employees of a referral agent.

(~~13~~15) "Registry" means a list of referral agents registered with the Department in accordance with OAR 411-058-~~00100020~~.

(~~14~~16) "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.~~

Stat. Auth.: ORS 409.050, 410.070, 443.373
Stats. Implemented: ORS 409.050, 410.070, 443.370

411-058-0010 Registration Required

(1) A referral agent who provides long term care referrals to clients must be registered with the Department. and obtain a Certificate of Registration 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.

(2) If a referral agent maintains a website it must contain a link to the Oregon Licensed Long Term Care Settings Search website <https://ltlicensing.oregon.gov/> listing complaints concerning and regulatory actions by facilities.

(3) If the referral agent does not maintain a website, the referral agent shall notify clients in writing of the Oregon Licensed Long Term Care Settings Search website <https://ltlicensing.oregon.gov/>, as listed above in (2).

(4) The Department will notify the applicant of receipt of the application for Certificate of Registration within 10 calendar days.

(5) The Department will notify the applicant within 60 calendar days after receiving the completed application of the decision to approve or deny a Certificate of Registration.

~~(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) 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 10 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 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.~~

~~(8) If any person who has not previously met section (2)(a) and (2)(b) of this rule, and receives compensation as defined by 411-058-0000(3), then that person must apply for registration as prescribed by Section (3) of this rule within 30 calendar days of obtaining the amount prescribed in 411-058-0000(3).~~

Stat. Auth.: ORS 409.050, 410.070, 443.373
Stats. Implemented: ORS 409.050, 410.070, 443.373

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~~ and 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~~0070; and

(D) Background Check Requirements, as described in OAR 411-058-0080.

(b) The application is not considered to be complete until the Department receives all required information and the registration fee.

(c) The referral agent disclosure statement must be signed by the referral agent, submitted to the Department for approval, and maintained on record with the Department. ~~The application for registration must be signed by the individual responsible for the registration.~~

(d) ~~Registration~~ The referral agent must be renewed their registration with the Department every two 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~~ Certificate of registration Registration once the applicant has: complied with (1) and (2) above.

(b) The Certificate of Registration shall identify the person or entity as a referral agent and includes:

(A) Name, doing business as (DBA) and address of the person or entity.

(B) Certificate of Registration date of issue and expiration.

(C) A certificate that states the following:

"A Certificate of Registration does not constitute recommendation or endorsement of the referral agent by the Oregon Department of Human Services, and this registration does not evidence the accuracy or completeness of the information set forth in the disclosure statement."

(4) If any person or referral agent who has not been issued a Certificate of Registration in compliance with this rule receives compensation as defined by 411-058-0000(4), then that person must apply for registration as prescribed by Section (1) of this rule within 30 calendar days of receiving such compensation.

~~(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 the:~~

~~(A) Name and address of the person;~~

~~(B) Effective date of the registration; and~~

~~(C) 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.~~

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.373

411-058-0030 Disclosure Statement

~~(1) All applicants must file a sample disclosure statement with the Department when submitting a new registration or initial application, with every registration renewal, and when amended. ~~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 written in clear language, be prepared in a minimum 12-point font, and include the following elements: 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, agent name, address, and phone number, email address and website.;

(c) The referral agent's privacy policy or a link thereto.;

(d) A statement of whether the referral agent provides referrals only to facilities with which the agent has an existing business 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.

(3) If the referral agent does not have a website, the disclosure statement must include information providing the Oregon Licensed Long Term Care Settings Search website <https://ltclicensing.oregon.gov/> listing complaints concerning facilities.

~~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.~~

(4) Prior to amending a disclosure statement, a referral agent must submit all amended documents and new materials to the Department for review and approval.

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

(5) The disclosure may be made orally first 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. Proof of disclosure either oral or written must be retained and available to the Department.

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.376

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 via facsimile, letter, electronic mail, or other electronic means of written communication that the referral agent stop contacting the client.

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.376

411-058-0050 Client Records

A referral agent shall maintain client records sufficient to document compliance with ORS 443.370 to 443.376 for a period of three years from the date of any disclosure statement given to a client.

~~(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.~~

Stat. Auth.: ORS 409.050, 410.070, 443.373
Stats. Implemented: ORS 409.050, 410.070

411-058-0060 Subsequent Facility

411-058-0060 Special Provisions

(Adopted 7/1/2018)

~~(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.~~

(31) 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 described in this section, the first referral agent may not receive compensation from another facility in a subsequent move for any referral made before receiving the notice.

(42) 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 as described in this section. A facility is a subsequent facility when if:

(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.

(53) When a referral is made to a subsequent facility for a subject of placements ~~s~~ by a new referral agent as described in section (42) of this rule,

the new referral agent must present evidence to the subsequent facility that the first referral agent is not entitled to compensation.

~~(6) This section applies only to contracts entered into between a referral agent and a facility or between a referral agent and a client on or after July 1, 2018.~~

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.376

411-058-0070 General Liability Insurance Requirements

(1) An applicant must demonstrate that it maintains at least ~~one million~~ \$1,000,000 per occurrence in general liability insurance, as described in OAR 411-058-0020.

(2) A referral agent must maintain a commercial general liability insurance policy in an amount of at least \$1,000,000 per occurrence throughout the entire period of registration on an uninterrupted basis as described in OAR 411-058-0020.

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

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

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.373

411-058-0080 Background Check Requirements

(1) Any referral agent, including any employee, owner, or operator of a referral ~~agent that~~ agency who provides long term care referrals to clients, and who comes into direct contact with clients must ~~complete~~ pass a criminal background check every 24 months as described in this section of

~~this rule. process described in section (3) of this rule with an outcome of approved.~~ Direct contact with clients includes:

(a) In-person contact with clients;

(b) Telephone contact with clients to obtain client-specific information, including, but not restricted to a client's medical, financial, and long term care needs;

(c) Electronic communication with clients to obtain client-specific information, including, but not restricted to a client's medical, financial, and long term care needs; or

(d) Contact with clients through written communication via US mail, other delivery services, or facsimile to obtain client-specific information, including, but not restricted to a client's medical, financial, and long term care needs.

(2) If a referral agent or employee is hired on a preliminary basis pursuant to OAR 407-007-0315 or a substantially similar process used by a background check entity as described in OAR 411-058-0080(3) through (7), active supervision of the referral agent or employee shall include that the person supervising:

(a) Knows where the referral agent or employee is and what the referral agent or employee is doing; and

(b) Periodically observes the action of the employee through in-person, telephonic, or electronic contact with the agent or employee.

(3) Any referral agent, including any employee of a referral agent that provides long term care referrals to clients and who comes into direct contact with clients, as described in 411-058-0080(1), must undergo a background check process substantially similar to the process described in OAR 407-007-0200 to 407-007-0320 with an outcome of approved.

(4) As an alternative to utilizing the Oregon Department of Human Services' DHS' Background Check Unit, referral agents may utilize background check entities that are accredited by the National Association of Professional Background Screeners Screening Association, subject to these rules.

(5) Referral agents utilizing alternative background check entities per 411-058-0080(4) must obtain prior authorization from the Oregon Department of Human Services as described in 411-058-0080(6).

(6) The Oregon Department of Human Services will approve a referral agent's use of an alternate background check entity, which demonstrably meets the requirements of this rule, if the referral agent provides:

(a) A notarized affidavit from the background check entity describing and demonstrating that the entity's background check process utilized for referral agents is substantially similar to the process defined in OAR 407-007-0200 to 407-007-~~03200~~370.

(b) The affidavit must include a detailed account of how the entity's process deviates from OAR 407-007-0200 to 407-007-~~03200~~370.

(c) The affidavit must include the affiant's title and role in the entity.

(7) The Oregon Department of Human Services shall review in good faith and prior-authorize, deny, or seek additional information from the referral agent's choice of nationally accredited background check entity within 15 calendar days of submission of the request and affidavit.

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.373

411-058-0085 Mandatory Abuse Reporting

(1) Referral agents are mandatory reporters under ORS 124.050 and subject to the abuse reporting requirements of ORS 124.060.

(2) A mandatory reporter must report if they have reasonable cause to believe that an elderly person in any setting has suffered abuse, as described in ORS 124.050 and listed below:

(a) Any physical injury to an elderly person caused by other than accidental means.

(b) Neglect.

(c) Abandonment.

(d) Willful infliction of physical pain or injury.

(e) Crimes listed in ORS 124.050.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint.

(3) Mandatory reporters must immediately report abuse and suspected abuse to 1-855-503-7233, as required by ORS 124.065.

(4) Anyone who, in good faith and with reasonable grounds, reports abuse or suspected abuse shall have immunity from any criminal or civil liability, as stated in ORS 124.075.

Stat. Auth.: ORS 124.050, 124.060, 124.072, 124.075

Stats. Implemented: ORS 124.050, 124.060, 124.072, 124.075

~~411-058-0090 Administrative Sanctions~~

(Adopted 7/1/2018)

~~(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 providing 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 as defined in OAR 411-020-0002 and 411-085-0005. The referral agent may request a review of the decision by submitting a request, in writing, within 10 days of the notice and order of suspension, revocation or non-renewal.~~

~~(6) Within 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 10 days, the notice of administrative sanction shall become a final order of the Department by default.~~

Stat. Auth.: ~~ORS 409.050, 410.070, 443.373~~

Stats. Implemented: ~~ORS 409.050, 410.070, 443.373~~

411-058-0090 Administrative Sanctions and Civil Penalties

(1) The Department may impose an administrative sanction or a civil penalty against a referral agent for noncompliance with these rules, as follows:

(a) There has been substantial failure to comply with these rules or where there is substantial noncompliance 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.

(e) The referral agent has been substantiated for abuse after a report issued under ORS 124.071 or 441.650.

(2) CIVIL PENALTIES. The Department may impose civil penalties as follows:

(a) \$750 on a long term care referral agent that is not registered with the Department. If the long term care referral agent fails to apply for registration, then this civil penalty will increase on the following schedule, up to:

(A) \$1,500, after failing to apply for registration within 30 calendar days of notice of non-compliance.

(B) \$3,000, after failing to register within 60 calendar days of notice of non-compliance.

(C) \$6,000, after failing to register within 90 calendar days of notice of non-compliance.

(D) \$10,000, after failing to register within 120 or more calendar days of notice of non-compliance.

(b) \$500 per violation for failure to provide a client or their legal representative a disclosure statement.

(c) Not more than \$500 per violation for employing an individual who has not completed a background check and has not been hired on a preliminary basis, as described in OAR 411-058-0080. Failure to correct this violation within seven business days of notice of non-compliance shall result in a penalty of up to \$1,000 per violation. Subsequent failure to correct this violation within seven business days of the second notice of non-compliance shall result in a penalty of up to \$250 per violation, per business day until the violation is corrected.

(d) Maximum of \$2,500 per violation if a client's placement information is shared or sold without obtaining the client's consent, as described in OAR 411-058-0040.

(e) Maximum of \$2,500 per violation if a referral agent refers a client to a facility in which the referral agent or an immediate family member of the referral agent has an ownership interest.

(f) Maximum of \$1,000 per violation if a referral agent fails to stop contacting a client who has requested in writing that the referral agent stop contacting that client.

(g) Maximum of \$500 per violation for non-compliance of client records requirements as described in OAR 411-058-0050.

(h) \$1,000 for failure to maintain General Liability insurance, as described in OAR 411-058-0070.

(i) Maximum of \$250 per violation for any general violation not otherwise specified in this rule.

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.373

411-058-0100 Civil Penalties

(Adopted 1/1/2019)

~~(1) Effective January 1, 2019, the Department may impose a civil penalty of \$750 on a long term care referral agent that is not registered with the Department. If the long term care referral agent fails to register, then this civil penalty will increase on the following schedule, up to:~~

~~(a) \$1,500, after failing to register within 30 calendar days of notice of non-compliance.~~

~~(b) \$3,000, after failing to register within 60 calendar days of notice of non-compliance.~~

~~(c) \$6,000, after failing to register within 90 calendar days of notice of non-compliance.~~

~~(d) \$10,000, after failing to register within 120 or more calendar days of notice of non-compliance.~~

~~(2) The Department may impose a civil penalty of \$500 per violation for failure to provide clients a disclosure statement.~~

~~(3) Effective January 1, 2019, the Department may impose a civil penalty of no more than \$500 per violation for employing an individual who has not completed a background check and is not in the status of being hired on a preliminary basis, as described in OAR 411-058-0080. Failure to correct this violation within seven business days of notice of non-compliance shall result in a penalty of up to \$1,000 per violation. Subsequent failure to correct this violation within seven business days of the second notice of non-compliance shall result in a penalty of up to \$250 per violation, per business day until the violation is corrected.~~

~~(4) The Department may impose a civil penalty of up to \$2,500 per violation if a client's placement information is shared or sold without obtaining the client's affirmative consent, as described in OAR 411-058-0040.~~

~~(5) The Department may impose a civil penalty of up to \$2,500 per violation if a referral agent refers a client to a facility in which the referral agent or an immediate family member of the referral agent has an ownership interest.~~

~~(6) The Department may impose a civil penalty of up to \$1,000 per violation if a referral agent fails to stop contacting a client who has requested in writing that the referral agent stop contacting that client.~~

~~(7) The Department may impose a civil penalty of no more than \$500 per violation for non-compliance of client records requirements as described in OAR 411-058-0050.~~

~~(8) The Department may impose a civil penalty of \$1,000 for failure to maintain General Liability insurance, as described in OAR 411-058-0070.~~

~~(9) The Department may impose civil penalties up to \$250 per violation for any general violation not otherwise specified in this rule.~~

~~(10) Any civil penalty imposed under this section shall follow procedures established by ORS 183.745 "Civil Penalty Procedures". The notice of civil penalty shall be sent by mail, certified mail, or electronic mail and include:~~

~~(a) Reference to the particular sections of statute, rule or order involved;~~

~~(b) Short and plain statement of the matters asserted or charged;~~

~~(c) Statement of the amount of penalty or penalties imposed; and~~

~~(d) Statement of the right to request a hearing.~~

~~(11) The person to whom the notice is addressed shall have 20 calendar days from the date of service of the notice in which to make a written application for a hearing.~~

~~(12) All hearings shall be conducted according to the applicable provisions of ORS Chapter 183.~~

~~(13) 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.~~

~~(14) If the order is not appealed, the amount of the penalty is payable within the timeframe in ORS 183.745. If the order is appealed and is sustained, the amount of the penalty is payable within the timeframe in ORS 183.745. The order, if not appealed or sustained on appeal, shall constitute a judgement and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgement of a court of record.~~

~~(15) 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.~~

Stat. Auth.: ~~ORS 409.050, 410.070, 443.373~~

Stats. Implemented: ~~ORS 409.050, 410.070, 443.373~~

411-058-0110 Notice and Hearing Rights

(1) NOTICE. A notice of administrative sanction or civil penalty shall follow procedures established by ORS 183.745 "Civil Penalty Procedures" and be sent by mail, certified mail or electronic mail.

(2) HEARINGS. Right to Hearing. If the Department imposes an Order, the licensee is entitled to a contested case hearing pursuant to ORS chapter 183.

(3) REQUEST FOR HEARING. A referral agent who wishes to contest the proposed civil penalty must request a hearing within 20 calendar days of the date of mailing of the notice. The request must be made in writing and mailed or emailed to the address in the notice. If mailed by First Class Mail, the date of postmark shall be the date of request.

(4) INFORMAL REVIEW. As part of this contested case hearing process, the referral agent may request that an informal review be held to discuss the merits of the case before the contested case hearing.

(a) The Department has discretion on whether to grant an informal review. If the Department grants the informal review, the referral agent will be contacted, and an informal review will be scheduled.

(b) If the referral agent and the Department resolve the issues to the satisfaction of the referral agent, then the Department will contact the Office of Administrative Hearings (OAH) and inform OAH the contested case hearing will not need to proceed.

(5) FINAL DECISION IF NO REQUEST. If a referral agent fails to submit a written request for a contested case hearing within 20 calendar days of receipt of the notice described in paragraph (2) of this section, the Department's original decision to assess a civil penalty shall become a final order of the Department by default.

(6) CIVIL PENALTIES. Civil penalties are due within 10 calendar days after an order becomes final, either by default or after hearing.

Stat. Auth.: ORS 409.050, 410.070, 443.373

Stats. Implemented: ORS 409.050, 410.070, 443.373