

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

**CHAPTER 411
DIVISION 58**

LONG TERM CARE REFERRAL SERVICES

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(Effective 09/15/2022)**

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411-058-0000 Definitions *(Amended 09/15/2022)*

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.
- (3) "Client" means an individual who seeks a long term care referral for the individual or for another individual.
- (4) "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.

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

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

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

(9) "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](#).

(10) "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.

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

(12) "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](#).

(13) "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.

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

- (a) A facility or its employees;
- (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;
- (c) A public body as defined in [ORS 174.109](#); or
- (d) The employees of a referral agent.

(15) "Registry" means a list of referral agents registered with the Department in accordance with [OAR 411-058-0020](#).

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

Stat. Auth.: [ORS 409.050](#), [410.070](#), [443.373](#)

Stats. Implemented: [ORS 409.050](#), [410.070](#), [443.370](#)

411-058-0010 Registration Required (Amended 09/15/2022)

(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://ltclicensing.oregon.gov/> listing complaints and regulatory actions by facility.

(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://ltclicensing.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.

Stat. Auth.: [ORS 409.050](#), [410.070](#), [443.373](#)

Stats. Implemented: [ORS 409.050](#), [410.070](#), [443.373](#)

411-058-0020 Registration (Amended 09/15/2022)

(1) APPLICATION FOR REGISTRATION:

(a) Application for registration must be made to the Department 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 411-058-0070](#); 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.
- (d) The referral agent must renew 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 of 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 [OAR 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.

Stat. Auth.: [ORS 409.050](#), [410.070](#), [443.373](#)

Stats. Implemented: [ORS 409.050](#), [410.070](#), [443.373](#)

411-058-0030 Disclosure Statement (Amended 09/15/2022)

(1) All applicants must file a disclosure statement with the Department when submitting a new registration or initial application, with every registration renewal, and when amended.

(2) The disclosure statement must be written in clear language, be prepared in a minimum 12-point font, and include the following elements:

(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.

(b) The referral agent's contact information, including, agent name, address, 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.

(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.

(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.

(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 (Amended 09/15/2022)

(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 (Amended 09/15/2022)

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.

Stat. Auth.: [ORS 409.050, 410.070, 443.373](#)

Stats. Implemented: [ORS 409.050, 410.070](#)

411-058-0060 Subsequent Facility (Amended 09/15/2022)

(1) 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 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.

(2) 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 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.

(3) When a referral is made to a subsequent facility for a subject of placement by a new referral agent as described in section (2) of this rule, the new referral agent must present evidence to the subsequent facility that the first referral agent is not entitled to compensation.

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 (Amended 09/15/2022)

(1) An applicant must demonstrate that it maintains at least \$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](#).

Stat. Auth.: [ORS 409.050, 410.070, 443.373](#)

Stats. Implemented: [ORS 409.050, 410.070, 443.373](#)

411-058-0080 Background Check Requirements (Amended 09/15/2022)

(1) Any referral agent, including any employee, owner, or operator of a referral agency who provides long term care referrals to clients, and who comes into direct contact with clients must pass a criminal background check every 24 months as described in this section of this rule. 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 407-007-0370](#) with an outcome of approved.

(4) As an alternative to utilizing the Oregon Department of Human Services' Background Check Unit, referral agents may utilize background check entities that are accredited by the Professional Background 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 407-007-0370](#).

(b) The affidavit must include a detailed account of how the entity's process deviates from [OAR 407-007-0200 to 407-007-0370](#).

(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 (Adopted 09/15/2022)

(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 and Civil Penalties (Amended 09/15/2022)

(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 [ORS 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 (Repealed 09/15/2022)

411-058-0110 Notice and Hearing Rights (Adopted 09/15/2022)

(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](#)