

OFFICE OF THE SECRETARY OF STATE

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AND TRIBAL LIAISON



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## STATUTORY MINOR CORRECTION

### OTIS 1-2024

CHAPTER 419

OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

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03/01/2024 10:11 AM  
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FILING CAPTION: Minor Correction due to Renumbering of Referral Agent Rules to OAR Chapter 419

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M Tina Strahan

Rules Coordinator

AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting statutory or rule references

AMEND: 419-300-0000

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0000

Purpose

The purpose of OAR Chapter 40719 Division 49300 is to ensure that Referral Agents who refer children to "programs" are registered with the Oregon Department of Human Services. This rule applies to both children that are residents of Oregon being referred to a "program" out of the State of Oregon or children from other states that are being referred to a "program" in the State of Oregon.

Statutory/Other Authority: ORS 418.351 to 418.357, ORS 409.050

Statutes/Other Implemented: ORS 409.050

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## STATUTORY MINOR CORRECTION

OTIS 2-2024

CHAPTER 419

OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting statutory or rule references

AMEND: 419-300-0005

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0005

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR Chapter ~~407~~419, Division ~~49~~300:¶

- (1) "Applicant" means a person that has submitted an application and disclosure 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 "program" Referral Registration 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.¶
- (3) "Client" means a parent or guardian or other person seeking a referral or recommendation for "programs" for a person under the age of 18 who is experiencing behavioral, emotional, mental health, substance use, delinquency, or disability-related challenges. as defined in this rule.¶
- (4) "Compensation" means:¶
  - (a) Any financial or material gain from one or more "program" in a total amount of \$75.00 or more during a calendar year in exchange for providing program referral services to those "programs"; including, but not limited to, gain by salary, benefits, commission, payment, gift cards, donations, discounts, and other items of value that result in material gain to the person providing program referral services. ¶
  - (b) "Compensation" does not include: Expenditures by "programs" to educate the referral agent regarding a particular "program", as long as long as they are customary, ordinary, and reasonable. Travel, lodging and meals associated with visiting a "program" or a working lunch when a referral agent visits a "program" are customary, ordinary, and reasonable expenditures."¶
- (5) "Consent" means the client has given their permission and have knowledge of the nature of the action or transaction involved. ¶
- (6) "Department" means the Oregon Department of Human Services, The Office of Training, Investigations, and Safety (OTIS).¶
- (7) "Disclosure" means a written statement provided by the referral agent to a client and to the Department as

outlined in OAR ~~407-04919-300-0030~~.

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

(9) "Licensing Action" means any formal regulatory action(s) taken by the licensing authority intended to halt, address, and/or correct noncompliance of a Program. Licensing Actions include but are not limited to Corrective Actions, Civil Penalties, Denial, Suspension, or Revocation of a License and Imposing Conditions on a License.

(10) "Placement Information" means any information a person collects from a client about the client or the subject of placement, including but not limited to name, electronic mail address, telephone number, zip code, medical history, information about necessary services or the reasons for seeking care at the "program" as defined in this rule.

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

(12) "Program" means:

(a) A residential program or facility that meets the criteria of a child-caring agency as defined in ORS 418.205, regardless of whether the "program" is located in Oregon or out of Oregon.

(b) "Program" does not include:

(A) A hospital as defined in ORS 442.015 or a rural hospital as defined in ORS 442.470.

(B) An adoption agency.

(C) An academic boarding school that provides educational services and care to children 24 hours a day and does not offer or arrange specialized treatment or therapeutic services to students with disabilities or to students with social, emotional, or behavioral problems.

(13) "Program Referral" means a referral to a "program" in connection with which the referral agent receives compensation from any source when:

(a) The client or the subject of placement resides in the State of Oregon.

(b) The referral agent resides in or has a primary place of business in the State of Oregon; or

(c) The "program" to which the referral is made is located in the State of Oregon.

(14) "Referral Agent" means:

(a) A person, educational consultant, employee of a referral agency, or independent contractor that provides referrals for clients and subjects of placement to "Program(s)". Referral Agents are commonly referred to as Educational Consultants or Therapeutic Consultants.

(b) "Referral Agents do not include:

(A) A public body as defined in ORS 174.109.

(B) A residential care program or its employees.

(C) A physician licensed under ORS Chapter 677 or a nurse practitioner licensed under ORS 678.375 to 678.390 if the subject of placement is a patient of the physician or nurse practitioner and the physician or nurse practitioner has deemed the placement to be medically necessary.

(15) "Secure Transportation Services Provider" means a private organization or person that provides secure transportation or secure escort services for children to or from a school, agency, organization, program, or child-caring agency as defined in ORS 418.205(2)(a)(A), if the school, agency, organization or program is located in this state or in any other state.

(16) "Subject of Placement" means the individual to be placed with a "program" through a referral.

(17) "Subject of Placement Records" and "Client Records" are including, but limited to, documents that were obtained or generated by the referral agent in order to refer the subject of placement to a "program":

(a) any written agreement entered on behalf of the subject of placement to the referral agent and/or written agreement between the client and referral agent

(b) disclosures provided to the "client"

(c) all notes of meetings and deliberations on placement referrals for a subject of placement

(d) financial records

(e) treatment records

(f) service delivery logs

(g) incident reports

(h) case notes or progress notes

(i) medication logs

(j) clinical assessments and diagnostic information

(k) names and contact information for subject of placement's parents or guardians

(l) date of birth of the subject of placement

(m) educational logs, reports, notes, and plans

(n) law enforcement reports, and notes

Statutory/Other Authority: ORS 409.050, ORS 419B.005 to 419B.050, ORS 418.351 to 418.357

Statutes/Other Implemented: ORS 409.050

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**STATUTORY MINOR CORRECTION**

**OTIS 3-2024**

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OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting statutory or rule references

AMEND: 419-300-0020

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0020

Registration

All referral agents must apply to be registered with the Department as a referral agent prior to making a program referral. ¶

(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 as described in OAR ~~407-049~~19-300-0030.¶

(C) General liability insurance requirements, as described in OAR ~~407-049~~19-300-0050; and¶

(D) Background check requirements as described in OAR ~~407-049~~19-300-0040.¶

(E) A valid e-mail address.¶

(F) A copy of the referral agent's complete personnel list with job titles, and organization chart.¶

(G) Other documents or information requested by the Department.¶

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

(c) The application for registration must identify an individual who is responsible for the application, and be signed by the individual or their designee.¶

(d) Registration must be renewed with the Department every two years. ¶

(2) REGISTRATION FEE:¶

(a) The initial application for registration must be accompanied by a fee of \$325.00. ¶

(b) After the initial application registration, subsequent renewal fee shall be \$325.00. ¶

(3) ISSUANCE OF REGISTRATION:¶

(a) The Department shall issue a certificate of registration once the applicant has:¶

(A) Submitted a completed application, disclosure, proof of general liability insurance requirements, proof of completed and approved background check requirements, any other required information; and¶

(B) Met all other requirements as described by these rules. ¶

(b) The certificate of registration issued by the Department will identify the person as a referral agent and will include the following: ¶

(A) Name and address of the person to be registered; and¶

(B) Effective date of the registration; and¶

(C) Following statement in a location that is noticeable and bold 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."

Statutory/Other Authority: ORS 409.050, ORS 419B.005 to 419B.050, ORS 418.351 to 418.357

Statutes/Other Implemented: ORS 409.050

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**STATUTORY MINOR CORRECTION**

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OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting statutory or rule references

AMEND: 419-300-0030

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0030

Disclosure

(1) All referral agents must have a written disclosure and shall provide it to the following:¶

(a) The client for every "program" the client is referred to; and, ¶

(b) The Department, as part of the application and renewal process, and any time upon request.¶

(2) The referral agent's disclosure and any amendments to the disclosure must be signed by the referral agent and submitted to the Department for approval and maintenance in the referral agent's file with the Department.¶

(3) DISCLOSURE REQUIREMENTS¶

(a) The written disclosure must be provided to the client at the same time the client is offered information, referral information or recommendation regarding a "program." The written disclosure must be conspicuous, provided in clear language and include a description of the program referral to be provided by the referral agent. The written disclosure must include:¶

(A) The names of all agencies that license the "program" and the type of licenses the "program" currently holds;¶

(B) All licensing actions taken against the "program" or its parent company in the prior 24 months, based on direct inquiry with each entity that licenses the "program";¶

(C) The number of substantiated allegations of abuse, deaths and/or serious injuries at the agency in the prior 24 months, based on direct inquiry with each entity that licenses the agency or investigates abuse at the agency;¶

(D) The "program's" restraint, seclusion, and behavioral management policy;¶

(E) Names, titles, and educational background of the leadership team of the "program";¶

(F) Day and nighttime ratios of staff to person(s) under 18 of the "program";¶

(G) Whether the "program" serves youth offenders;¶

(H) Names, titles, and educational background of all health care program providers who are employees of the "program".¶

(I) If the "program" advertises treatment services, whether the "program" is regulated as a behavioral health center by its state's health authority;¶

(b) A description of the relationship between the referral agent and the "program" including:¶

(A) A statement of whether the referral agent provides "program" referrals only to programs with which the agent

has an existing contract, and the length of any contract(s).¶¶

(B) A disclosure of all sources of fees, compensation, or consideration the referral agent may receive in exchange for making the program referral.¶¶

(c) A description of the referral agent's qualifications and business practices, including:¶¶

(A) The referral agent's contact information, including address and telephone number.¶¶

(B) The referral agent's educational background and qualifications.¶¶

(C) The referral agent's privacy policy.¶¶

(d) The date of the referral agent's last visit to every "program" and whether the visit was in person or a virtual tour as permitted under OAR ~~407-049~~19-300-0100 (1)(e).¶¶

(e) A disclosure that the referral agent is registered by the Department and all referral documentation is subject to review by the Department.¶¶

(f) Referrals made by a referral agent to a Secure Transportation Services Provider must include the following disclosure: ORS 418.215 requires a secure transportation services provider that transports children to or from a school, agency, organization or program along a route that begins or ends in Oregon to be licensed by the Department of Human Services.¶¶

(4) The referral agent must maintain records documenting the provision of the disclosure to the client for a duration prescribed in OAR ~~407-049~~19-300-0080.¶¶

(5) To amend a disclosure, a referral agent must file all amended documents and new material with the Department for review and approval.

Statutory/Other Authority: ORS 409.050, ORS 419B.005 to 419B.050, ORS 418.351 to 418.357

Statutes/Other Implemented: ORS 409.050



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## STATUTORY MINOR CORRECTION

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OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting statutory or rule references

Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule

AMEND: 419-300-0060

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0060

Program Referrals

(1) A referral agent shall provide a client with a disclosure at the same time the client is offered information, referral, or recommendation regarding a "program." The written disclosure must meet the same standard as the disclosure that was provided to the Department as described in OAR ~~407-04919-300-0030~~. ¶

(2) The referral agent must provide to the client a website or written notice for each "program" to which the referral agent makes program referrals. The website or written notice must include the following:¶

(a) A link to the state agency website listing licensing or substantiated abuse complaints concerning the "program";¶

(b) Contact information to facilitate reporting of abuse or neglect and licensing violations in the state in which the "program" is located; and¶

(c) Contact information for all law enforcement agencies responsible for coverage of the community in which the "program" is located.¶

(3) Before a referral agent refers a client to a "program" the referral agent must review and disclose the following information as required by OAR ~~407-04919-300-0030~~(3):¶

(a) All licensing actions taken against the "program" or its parent company in the prior 24 months, based on direct inquiry with each agency that licenses the "program";¶

(b) The number of substantiated allegations of abuse, deaths and or serious injuries at the "program" in the prior 24 months, based on direct inquiry with each entity that licenses the "program" or investigates abuse at the "program".¶

(4) A "client" in accordance with ORS 418.353 (5), may bring a cause of action for a violation of the following rules:¶

(a) OAR ~~407-04919-300-0030~~;¶

(b) OAR ~~407-04919-300-0060~~;¶

(c) OAR ~~407-04919-300-0070~~; or¶

(d) OAR ~~407-04919-300-0100~~.

Statutory/Other Authority: ORS 409.050, ORS 419B.005 to 419B.050, ORS 418.351 to 418.357  
Statutes/Other Implemented: ORS 409.050

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## STATUTORY MINOR CORRECTION

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

Correcting statutory or rule references

AMEND: 419-300-0080

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0080

Subject of Placement and Client Records

(1) A referral agent must maintain the client's and the subject of placement's records for a minimum of five years after the subject of placement turns 18 and is no longer receiving services from the referral agent, whichever is greater. ¶

(2) A referral agent must provide a client access to the client's and the subject of placement's records, retained by the referral agent, within 30 calendar days of the client's oral or written request for records. ¶

(3) A referral agent must provide the Department with any client records upon request by the Department. ¶

(4) Records must be must accurately prepare and safely store its records and ensure the records are readily available for inspection by the Department. ¶

(5) Records must be uniform in organization, readily identifiable and accessible, current and complete, and contain all of the information required in OAR ~~407-049~~19-300-0005 (17). ¶

(6) Records must be corrected, when necessary, by the use of a single line drawn through the incorrect information, the addition of the correct information, a notation of the date the correction is made, and the initials of the person making the correction. No "white out," eraser tape, or other means of eradicating information may be used to make a change to a record.

Statutory/Other Authority: ORS 409.050, ORS 419B.005 to 419B.050, ORS 418.351 to 418.357

Statutes/Other Implemented: ORS 409.050

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**STATUTORY MINOR CORRECTION**

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AGENCY ATTESTS THE FOLLOWING CHANGES HAVE BEEN MADE, ACCORDING TO ORS 183.335(7):

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AMEND: 419-300-0110

RULE SUMMARY: Minor correction to update cited OAR chapter 407, division 49 rules to the renumbered rule in OAR chapter 419, division 300.

CHANGES TO RULE:

419-300-0110

**Administrative Sanctions and Civil Penalties**

The Department may impose an administrative sanction or a civil penalty against a referral agent for noncompliance with these rules (OAR ~~407-04919-300-0000~~ - ~~407-04919-300-0100~~), as follows:¶¶

(1) ADMINISTRATIVE SANCTIONS: The Department may deny, suspend, revoke, or refuse to renew a registration when the Department finds:¶¶

(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 a licensing action or administrative sanction has been imposed; or¶¶

(d) The referral agent fails to comply with a final order of the Department imposing a licensing action or administrative sanction.¶¶

(e) The referral agent has been determined to have a potential disqualifying conviction or potential disqualifying condition under OAR 407-007-0041 and after a final fitness determination was denied under OAR 407-007-0320. ¶¶

(f) The referral agent has an incomplete fitness determination or a final fitness determination of denied in accordance with the "Background Checks for Providers" rules, OAR 407-007-0200 to 407-007-0370, without a subsequent background check approval for the position of referral agent.¶¶

(2) CIVIL PENALTIES¶¶

(a) The Department may impose the following Civil Penalty for violation of registration: ¶¶

(A) \$750 when a referral agent refers a client to a "program" and the referral agent is not registered with the Department. If the referral agent knowingly fails to apply for registration, then this civil penalty may increase on the following schedule, up to:¶¶

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

- (C) \$3,000, after failing to register within 60 calendar days of notice of non-compliance.¶
  - (D) \$6,000, after failing to register within 90 calendar days of notice of non-compliance.¶
  - (E) \$10,000, after failing to register within 120 or more calendar days of notice of non-compliance.¶
  - (b) The Department may impose a civil penalty not to exceed \$500 for each violation, unless otherwise required by law, on any referral agent who violates any section of OAR ~~407-04919-300-0000~~ through ~~407-04919-300-0100~~.¶
  - (c) The Department will consider the following factors in making a decision about the level of civil penalty imposed:¶
    - (A) The past history of the referral agent incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.¶
    - (B) Any prior violations of statutes or rules pertaining to the referral agent.¶
    - (C) The immediacy and extent to which the violation threatens or places at risk the health, safety, and well-being of the client or the subject of placement.¶
  - (d) Except as provided otherwise in section 2 (a) of this rule, for each violation by the referral agent the following civil penalty may be imposed:¶
    - (A) \$200, per violation if all three subsections of (c) of this rule favors the referral agent. ¶
    - (B) \$300, per violation if two subsections of (c) of this rule favors the referral agent. ¶
    - (C) \$400, per violation if one of the subsections of (c) of this rule favors the referral agent.¶
    - (D) \$500, per violation if no subsection of (c) of this rule favor the referral agent.
- Statutory/Other Authority: ORS 409.050, ORS 419B.005 to 419B.050, ORS 418.351 to 418.357  
Statutes/Other Implemented: ORS 409.050