

Enrolled
Senate Bill 749

Sponsored by Senator GELSER; Senator FREDERICK

CHAPTER

AN ACT

Relating to residential care referrals; creating new provisions; amending ORS 419B.005; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 3 of this 2021 Act:

(1) “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.

(2) “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 residential care.

(3)(a) “Referral agent” means a person that provides residential care referrals.

(b) “Referral agent” does not include:

(A) A residential care program or its employees.

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

(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.

(4)(a) “Residential care program” means 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) “Residential care 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.

(5) “Residential care referral” means a referral to a residential care program in connection with which the referral agent receives compensation from any source when:

(a) The client or the subject of placement resides in this state;

(b) The referral agent resides in or has a primary place of business in this state; or

(c) The program to which the referral is made is located in this state.

(6) "Subject of placement" means the individual to be placed with a residential care program through a residential care referral.

SECTION 2. (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 residential care program. The written disclosure must be conspicuous, provided in clear language and include:

(a) A description of the residential care referral to be provided by the referral agent, including:

(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 agency that licenses the program.

(C) 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 agency that licenses the program or investigates abuse at the program.

(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 staff to student ratio of the program.

(G) Whether the program serves youth offenders.

(H) Names, titles and educational background of all health care 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 the agent is making referral to, including:

(A) A statement of whether the referral agent provides residential care referrals only to programs with which the agent has an existing contract.

(B) A disclosure of all sources of fees, compensation or consideration the referral agent may receive in exchange for making the residential care 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 the facility and whether the visit was in person or a virtual tour as permitted under subsection (2)(b) of this section.

(2) A referral agent may not:

(a) Refer a client to a residential care program that is not licensed by the agency responsible for licensing child-caring agencies in the state where the program is located.

(b) Refer a client to a residential care program unless within the prior 24 months, the agent has personally toured the program or, if the tour occurred during a time when personal tours were prohibited by a federal, state or local emergency declaration, virtually toured the program.

(c) Refer a client to a residential care program that has had a restriction, revocation or suspension of its license by any licensing entity within the prior 12 months.

(d) Refer a client to an organization or company that offers secure transportation services that is not approved by the state Department of Human Services to accept referrals, under rules adopted by the department.

(e) Share a client's placement information with or sell a client's placement information to a program or marketing affiliate without obtaining affirmative consent from the client for each instance of sharing or selling the information.

(f) Refer a client to a residential care program in which the referral agent or an immediate family member of the referral agent has an ownership interest.

(g) Refer a client to a residential care program that provides any compensation, payment or consideration to the referral agent in exchange for the referral.

(h) Contact a client who has requested in writing that the referral agent stop contacting the client.

(3) For each residential care program to which the referral agent makes residential care referrals, a referral agent shall provide to a client via a website or written notice:

(a) A link to the state agency website listing licensing or abuse complaints concerning the program.

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

(c) Contact information for the law enforcement agency responsible for coverage of the community in which the program is located.

(4)(a) A referral agent must include in any contract with a residential care program provisions prohibiting the referral agent from collecting compensation for a referral to a program when the program is a subsequent program as described in this subsection. A program is a subsequent program if:

(A) The subject of placement enters a residential care program to which the subject of placement is referred by a first referral agent, but subsequently leaves that program; and

(B) A new referral agent refers the subject of placement to the subsequent program.

(b) When a residential care referral is made to a subsequent program for a subject of placement by a new referral agent as described in paragraph (a) of this subsection, the new referral agent must present evidence to the subsequent program that the first referral agent is not entitled to compensation for the referral.

(5) A client may bring a cause of action for a violation of this section and may recover actual damages or \$750, whichever is greater. The court may award reasonable attorney fees to the prevailing party in an action under this subsection.

SECTION 3. (1) A person may not provide a residential care referral unless the person is registered with the Department of Human Services under this section.

(2) The department shall issue a registration to provide residential care referrals to an applicant that meets requirements established by the department by rule and pays a \$325 fee.

(3) A registration issued under this section must be renewed every two years. The department shall set the renewal fee by rule, but the renewal fee may not exceed \$325.

(4) The department shall require an applicant to:

(a) Identify an individual responsible for the application;

(b) Demonstrate that the applicant meets the requirements of section 2 of this 2021 Act;

(c) Demonstrate that the applicant maintains at least \$1 million in general liability insurance; and

(d) Perform background checks on referral agents who have direct contact with clients, as defined by rule of the department.

(5) The department may adopt rules as necessary to administer sections 1 to 3 of this 2021 Act.

(6) The department may impose a civil penalty on a person for violation of sections 1 to 3 of this 2021 Act or violation of rules adopted under sections 1 to 3 of this 2021 Act.

SECTION 4. ORS 419B.005 is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency as that term is defined in ORS 418.205.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University; and

(d) A private institution of higher education located in Oregon.

(4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse.

(b) "Investigation" does not include screening activities conducted upon the receipt of a report.

(5) "Law enforcement agency" means:

(a) A city or municipal police department.

(b) A county sheriff's office.

(c) The Oregon State Police.

(d) A police department established by a university under ORS 352.121 or 353.125.

(e) A county juvenile department.

(6) "Public or private official" means:

(a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.

(b) Dentist.

(c) School employee, including an employee of a higher education institution.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

(i) Regulated social worker.

(j) Optometrist.

(k) Chiropractor.

(L) Certified provider of foster care, or an employee thereof.

(m) Attorney.

(n) Licensed professional counselor.

(o) Licensed marriage and family therapist.

(p) Firefighter or emergency medical services provider.

(q) A court appointed special advocate, as defined in ORS 419A.004.

(r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.

(s) Member of the Legislative Assembly.

(t) Physical, speech or occupational therapist.

(u) Audiologist.

(v) Speech-language pathologist.

(w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.

(x) Pharmacist.

(y) An operator of a preschool recorded program under ORS 329A.255.

(z) An operator of a school-age recorded program under ORS 329A.257.

(aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(bb) Employee of a public or private organization providing child-related services or activities:

(A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and

(B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.

(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

(dd) Personal support worker, as defined in ORS 410.600.

(ee) Home care worker, as defined in ORS 410.600.

(ff) Animal control officer, as defined in ORS 609.500.

(gg) Member of a school district board or public charter school governing body.

(hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a service identified in an individualized written service plan of a child with a developmental disability.

(ii) Referral agent, as defined in section 1 of this 2021 Act.

SECTION 5. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, for state assessments

and enterprise-wide costs, is increased by \$467,993, which may be expended for carrying out the provisions of this 2021 Act.

SECTION 6. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$10,660 for the purpose of carrying out the provisions of this 2021 Act.

SECTION 7. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (8), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for shared services, is increased by \$628,913 for the purpose of carrying out the provisions of this 2021 Act.

SECTION 8. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$253,709 for the purpose of carrying out the provisions of this 2021 Act.

SECTION 9. (1) Sections 1 to 3 of this 2021 Act and the amendments to ORS 419B.005 by section 4 of this 2021 Act become operative on January 1, 2022.

(2) The Department of Human Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the department by sections 1 to 3 of this 2021 Act and the amendments to ORS 419B.005 by section 4 of this 2021 Act.

SECTION 10. Section 2 of this 2021 Act applies only to contracts entered into between a referral agent and another party on or after January 1, 2022.

SECTION 11. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate June 24, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 25, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State