

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
SENATE BILL 749**

1 On page 1 of the printed bill, line 2, delete “and 646.608”.

2 Delete lines 5 through 30 and delete pages 2 through 9 and insert:

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

4 **“(1) ‘Client’ means a parent or guardian or other person seeking a**
5 **referral or recommendation for programs for a person under the age**
6 **of 18 who is experiencing behavioral, emotional, mental health, sub-**
7 **stance use, delinquency or disability-related challenges.**

8 **“(2) ‘Placement information’ means any information a person col-**
9 **lects from a client about the client or the subject of placement, in-**
10 **cluding but not limited to name, electronic mail address, telephone**
11 **number, zip code, medical history, information about necessary ser-**
12 **vices or the reasons for seeking residential care.**

13 **“(3)(a) ‘Referral agent’ means a person that provides residential**
14 **care referrals.**

15 **“(b) ‘Referral agent’ does not include:**

16 **“(A) A residential care program or its employees.**

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

18 **“(C) A physician licensed under ORS chapter 677 or a nurse practi-**
19 **tioner licensed under ORS 678.375 to 678.390 if the subject of placement**
20 **is a patient of the physician or nurse practitioner and the physician**
21 **or nurse practitioner has deemed the placement to be medically nec-**

1 **essary.**

2 **“(4)(a) ‘Residential care program’ means a residential program or**
3 **facility that meets the criteria of a child-caring agency as defined in**
4 **ORS 418.205, regardless of whether the program is located in Oregon**
5 **or out of Oregon.**

6 **“(b) ‘Residential care program’ does not include:**

7 **“(A) A hospital as defined in ORS 442.015 or a rural hospital as de-**
8 **defined in ORS 442.470.**

9 **“(B) An adoption agency.**

10 **“(C) An academic boarding school that provides educational ser-**
11 **vices and care to children 24 hours a day and does not offer or arrange**
12 **specialized treatment or therapeutic services to students with disabil-**
13 **ities or to students with social, emotional or behavioral problems.**

14 **“(5) ‘Residential care referral’ means a referral to a residential care**
15 **program in connection with which the referral agent receives com-**
16 **penensation from any source when:**

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

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

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

22 **“(6) ‘Subject of placement’ means the individual to be placed with**
23 **a residential care program through a residential care referral.**

24 **“SECTION 2. (1) A referral agent shall provide a client with a dis-**
25 **closure at the same time the client is offered information, referral or**
26 **recommendation regarding a residential care program. The written**
27 **disclosure must be conspicuous, provided in clear language and in-**
28 **clude:**

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

1 **“(A) The names of all agencies that license the program and the**
2 **type of licenses the program currently holds.**

3 **“(B) All licensing actions taken against the program or its parent**
4 **company in the prior 24 months, based on direct inquiry with each**
5 **agency that licenses the program.**

6 **“(C) The number of substantiated allegations of abuse, deaths and**
7 **or serious injuries at the program in the prior 24 months, based on**
8 **direct inquiry with each agency that licenses the program or investi-**
9 **gates abuse at the program.**

10 **“(D) The program’s restraint, seclusion and behavioral management**
11 **policy.**

12 **“(E) Names, titles and educational background of the leadership**
13 **team of the program.**

14 **“(F) Day and nighttime staff to student ratio of the program.**

15 **“(G) Whether the program serves youth offenders.**

16 **“(H) Names, titles and educational background of all health care**
17 **providers who are employees of the program.**

18 **“(I) If the program advertises treatment services, whether the pro-**
19 **gram is regulated as a behavioral health center by its state’s health**
20 **authority.**

21 **“(b) A description of the relationship between the referral agent and**
22 **the program the agent is making referral to, including:**

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

26 **“(B) A disclosure of all sources of fees, compensation or consider-**
27 **ation the referral agent may receive in exchange for making the resi-**
28 **dential care referral.**

29 **“(c) A description of the referral agent’s qualifications and business**
30 **practices, including:**

1 **“(A) The referral agent’s contact information, including address**
2 **and telephone number.**

3 **“(B) The referral agent’s educational background and qualifica-**
4 **tions.**

5 **“(C) The referral agent’s privacy policy.**

6 **“(2) A referral agent may not:**

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

10 **“(b) Refer a client to a residential care program that the agent has**
11 **not personally toured within the prior 24 months.**

12 **“(c) Refer a client to a residential care program that has had a re-**
13 **striction, revocation or suspension of its license by any licensing en-**
14 **tity within the prior 12 months.**

15 **“(d) Refer a client to an organization or company that offers secure**
16 **transportation services that is not approved by the state Department**
17 **of Human Services to accept referrals, under rules adopted by the de-**
18 **partment.**

19 **“(e) Share a client’s placement information with or sell a client’s**
20 **placement information to a program or marketing affiliate without**
21 **obtaining affirmative consent from the client for each instance of**
22 **sharing or selling the information.**

23 **“(f) Refer a client to a residential care program in which the re-**
24 **ferred agent or an immediate family member of the referral agent has**
25 **an ownership interest.**

26 **“(g) Refer a client to a residential care program that provides any**
27 **compensation, payment or consideration to the referral agent in ex-**
28 **change for the referral.**

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

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

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

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

8 **“(c) Contact information for the law enforcement agency responsi-**
9 **ble for coverage of the community in which the program is located.**

10 **“(4)(a) A referral agent must include in any contract with a resi-**
11 **dential care program provisions prohibiting the referral agent from**
12 **collecting compensation for a referral to a program when the program**
13 **is a subsequent program as described in this subsection. A program is**
14 **a subsequent program if:**

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

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

20 **“(b) When a residential care referral is made to a subsequent pro-**
21 **gram for a subject of placement by a new referral agent as described**
22 **in paragraph (a) of this subsection, the new referral agent must pres-**
23 **ent evidence to the subsequent program that the first referral agent**
24 **is not entitled to compensation for the referral.**

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

29 **“SECTION 3. (1) A person may not provide a residential care re-**
30 **ferred unless the person is registered with the Department of Human**

1 **Services under this section.**

2 **“(2) The department shall issue a registration to provide residential**
3 **care referrals to an applicant that meets requirements established by**
4 **the department by rule and pays a \$750 fee.**

5 **“(3) A registration issued under this section must be renewed every**
6 **two years. The department shall set the renewal fee by rule, but the**
7 **renewal fee may not exceed \$750.**

8 **“(4) The department shall require an applicant to:**

9 **“(a) Identify an individual responsible for the application;**

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

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

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

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

18 **“(6) The department may impose a civil penalty on a person for vi-**
19 **olation of sections 1 to 3 of this 2021 Act or violation of rules adopted**
20 **under sections 1 to 3 of this 2021 Act.**

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

22 **“419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-**
23 **quires otherwise:**

24 **“(1)(a) ‘Abuse’ means:**

25 **“(A) Any assault, as defined in ORS chapter 163, of a child and any**
26 **physical injury to a child which has been caused by other than accidental**
27 **means, including any injury which appears to be at variance with the ex-**
28 **planation given of the injury.**

29 **“(B) Any mental injury to a child, which shall include only observable**
30 **and substantial impairment of the child’s mental or psychological ability to**

1 function caused by cruelty to the child, with due regard to the culture of the
2 child.

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

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

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

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

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

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

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

26 “(H) Buying or selling a person under 18 years of age as described in ORS
27 163.537.

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

30 “(J) Unlawful exposure to a controlled substance, as defined in ORS

1 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-
2 fined in ORS 475B.015, that subjects a child to a substantial risk of harm to
3 the child’s health or safety.

4 “(b) ‘Abuse’ does not include reasonable discipline unless the discipline
5 results in one of the conditions described in paragraph (a) of this subsection.

6 “(2) ‘Child’ means an unmarried person who:

7 “(a) Is under 18 years of age; or

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

10 “(3) ‘Higher education institution’ means:

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

12 “(b) A public university listed in ORS 352.002;

13 “(c) The Oregon Health and Science University; and

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

15 “(4)(a) ‘Investigation’ means a detailed inquiry into or assessment of the
16 safety of a child alleged to have experienced abuse.

17 “(b) ‘Investigation’ does not include screening activities conducted upon
18 the receipt of a report.

19 “(5) ‘Law enforcement agency’ means:

20 “(a) A city or municipal police department.

21 “(b) A county sheriff’s office.

22 “(c) The Oregon State Police.

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

25 “(e) A county juvenile department.

26 “(6) ‘Public or private official’ means:

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

29 “(b) Dentist.

30 “(c) School employee, including an employee of a higher education insti-

1 tution.

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

4 “(e) Employee of the Department of Human Services, Oregon Health Au-
5 thority, Early Learning Division, Department of Education, Youth Develop-
6 ment Division, Office of Child Care, the Oregon Youth Authority, a local
7 health department, a community mental health program, a community de-
8 velopmental disabilities program, a county juvenile department, a child-
9 caring agency as that term is defined in ORS 418.205 or an alcohol and drug
10 treatment program.

11 “(f) Peace officer.

12 “(g) Psychologist.

13 “(h) Member of the clergy.

14 “(i) Regulated social worker.

15 “(j) Optometrist.

16 “(k) Chiropractor.

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

18 “(m) Attorney.

19 “(n) Licensed professional counselor.

20 “(o) Licensed marriage and family therapist.

21 “(p) Firefighter or emergency medical services provider.

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

23 “(r) A child care provider registered or certified under ORS 329A.030 and
24 329A.250 to 329A.450.

25 “(s) Member of the Legislative Assembly.

26 “(t) Physical, speech or occupational therapist.

27 “(u) Audiologist.

28 “(v) Speech-language pathologist.

29 “(w) Employee of the Teacher Standards and Practices Commission di-
30 rectly involved in investigations or discipline by the commission.

1 “(x) Pharmacist.

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

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

4 “(aa) Employee of a private agency or organization facilitating the pro-
5 vision of respite services, as defined in ORS 418.205, for parents pursuant to
6 a properly executed power of attorney under ORS 109.056.

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

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

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

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

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

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

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

22 “(gg) Member of a school district board or public charter school govern-
23 ing body.

24 “(hh) An individual who is paid by a public body, in accordance with ORS
25 430.215, to provide a service identified in an individualized written service
26 plan of a child with a developmental disability.

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

28 “**SECTION 5. (1) Sections 1 to 3 of this 2021 Act and the amend-**
29 **ments to ORS 419B.005 by section 4 of this 2021 Act become operative**
30 **on January 1, 2022.**

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

8 “SECTION 6. Section 2 of this 2021 Act applies only to contracts
9 entered into between a referral agent and another party on or after
10 January 1, 2022.

11 “SECTION 7. This 2021 Act being necessary for the immediate
12 preservation of the public peace, health and safety, an emergency is
13 declared to exist, and this 2021 Act takes effect on its passage.”.

14
