

FEDERAL LAW GAZETTE

FOR THE REPUBLIC OF AUSTRIA

Year 2015**Issued on December 1, 2015****Part II**

Ordinance 397: Professional rules and rules of practice for the organization of caregiving

397th ordinance of the Federal Minister of Science, Research and Economy on professional rules and rules of practice for the organization of caregiving

Based on Article 69, Paragraph 2 of the Trade Regulations 1994 (GewO 1994), Federal Law Gazette No. 194 as last amended by Federal Law Gazette No. 81/2015, the following is decreed in agreement with the Federal Minister for Labour, Social Affairs and Consumer Protection:

Section 1

Scope of Validity, Definitions

Scope of Validity

Article 1 This ordinance is valid for business with a trade license for the organization of caregiving (Article 161 of the Trade Regulations 1994 - GewO 1994 - Federal Law Gazette No. 194 as amended).

Definitions

Article 2 For the purpose of this ordinance, the following definitions shall apply:

1. "Agents" are persons authorized to exercise business activities with respect to the organization of caregiving (Article 161 of the Trade Regulations - GewO 1994);
2. "Caregivers" are persons authorized to exercise the business of caregiving (Article 159 of the Trade Regulations - GewO 1994);
3. "Dependants" are persons who call on the services of an agent (Article 161 of the Trade Regulations - GewO 1994);
4. "Contract of organization" refers to the contract concluded between the agent and the caregiver;
5. "Intermediary contract" refers to the contract concluded between the agent and the dependant or any other person who concludes the contract in favour of the dependant.

Section 2

General Obligations

General Obligations

Article 3 (1) Agents have to exercise their profession conscientiously and with due diligence. They are obliged to refrain from any professional misconduct. In particular, they shall refrain from placing persons who are not entitled to exercise the trade of caregiving or who have their trade license suspended according to Article 93, paragraph 1 of the Trade Regulations 1994 - GewO 1994.

(2) When exercising their business, agents have to keep in mind the well-being of the dependants and they may not misuse their professional position for their own benefit such as an unsolicited brokerage or an unsolicited conclusion of agreements. In particular, it is prohibited to accept services without equivalent return.

(3) Contacting private individuals for the purpose of collecting orders to render the service of organization of caregiving is only permitted if the person explicitly requests

the agent to do so. Order acceptance of such services is only permitted on the business premises or on the occasion of the meeting mentioned in the previous sentence.

(4) During business transactions, the agent has to do the following unless otherwise provided in section 5:

1. to point out that (s)he acts as a intermediary;
2. to indicate the prices for intermediary tasks;
3. to describe services included in intermediary activities and list the prices for each task of the service in a transparent way, and
4. in the case of prices indicated as examples, the agent has to indicate total costs for all tasks and, in case the caregiving services imply any allowance according to Article 21b of the Austrian Federal Care Allowance Act (Bundespflegegeldgesetz) or the agent advertises such allowance, to point out prerequisites for such allowances.

(5) In advertising materials the agent has to clearly indicate that (s)he acts as an intermediary and provide a phone number or an Internet address where all the information as referred to in paragraph 4 (2 to 4) can be found.

(6) In business activities, agents shall abstain from disseminating misleading information, in particular with respect to service description and prices for the pursuit of the activity.

Section 3 **Agents and caregivers**

Information to be provided prior to the conclusion of the contract of organization

Article 4 In any case, prior to concluding the contract of organization the agent has to inform the caregiver about the following:

1. That it is a sine qua non to possess a valid trade license for caregiving when concluding the caregiving contract (Article 2 of the ordinances on professional rules and rules of practice for the organization of caregiving for persons, Federal Law Gazette II No. 278/2007 as amended),
2. About the activities as authorized in Article 159 of the Trade Regulations 1994 (GewO);
3. About quality assurance measures to be observed as set forth in Article 160 of the Trade Regulations 1994 (GewO), and
4. About the requirements derived from the ordinance on professional rules and rules of practice for caregiving and in particular about the minimum content mentioned therein.

Contract of organization

Article 5 (1) The organization contract must be concluded in writing. The agent has to deliver a written copy to the caregiver.

(2) The organization contract has to include at least the following:

1. names (company name) and addresses of the contracting parties,
2. beginning and duration of the contractual relationship,
3. a transparent description of the services including details on ongoing services if agreed upon between the agent and the caregiver (this may include support during travelling to and from the place of provision of the services, support if a conflict has to be settled between caregiver and dependant, support when organizing a substitute when the caregiver is unable to come);
4. prices and due date of payment, dissection according to individual services, terms of payment and information on whether the agent is authorized to collect money on behalf of the caregiver;
5. provisions about termination of the contract, whereby this has to include that the contract shall revoke in case of death of the caregiver and the person entitled to exercise the trade of the organization of caregiving has to reimburse the pro rata amount of the remuneration paid in advance and that the contract may be terminated by either party to the contract with a two-week period of notice to the end of each calendar month, and
6. indication of a contact person for the agent who can be reached within a reasonable time frame.

(3) The individual parts of the content shall be described in simple and clear, yet detailed and exact manner.

Documentation

Article 6 Ongoing services rendered by the agent which are based on the organization contract according to Article 5, paragraph 2 (3) shall be documented on a regular basis and be made available to the caregiver or a copy handed over upon request.

Section 4

Agent, dependant

Assessment of demand

Article 7 (1) Before concluding the agency contract, the agent has to do the following:

1. to analyze the needs of the dependant and the situation in situ, and
2. to verify whether the caregiver foreseen for this specific job is able to meet the needs as analysed according to par. 7 (1).

(2) The agent has to document the results of the analysis (par. 7 (1)) and of the verification (par. 7 (2)) and, upon request, to hand over the results or a copy thereof to the dependant or the contractual partner if this is another person than the dependant.

Information

Article 8 The agent has to inform about

1. the permitted activities of a caregiver as authorized in Article 159 of the Trade Regulations 1994 (GewO);
2. the duties of the caregiver (such as the obligations of the caregiver to declare and pay taxes as well as social security contributions with respect to their activity as caregiver himself)
3. the services offered by the agent including prices, whereby this has to be presented in written upon request.

Intermediary contract

Article 9 (1) The intermediary contract has to be concluded in written. The agent shall hand over a written copy of the contract to the dependant or the person concluding the contract with the agent in favour of the dependant.

(2) The intermediary contract shall at least include the following:

1. names and addresses (company) of the contracting parties,
2. beginning and duration of the contractual relationship,
3. a transparent description of the services including details on ongoing services if agreed upon between the agent and the dependant (this may include regular examination to verify whether the needs of the dependant as analysed according to Article 7 par. 1 have changed and corresponding advisory activities, support if a conflict has to be settled between caregiver and dependant or organizing a substitute when the caregiver is unable to come);
4. prices and due date of payment, dissection according to individual services, terms of payment and information on whether the agent is authorized to collect money on behalf of the caregiver;
5. provisions about termination of the contract, whereby this has to include that the contract shall revoke in case of death of the dependant and the person entitled to exercise the trade of the organization of caregiving has to reimburse the pro rata amount of the remuneration paid in advance and that the contract may be terminated by either party to the contract with a two-week period of notice to the end of each calendar month, and
6. indication of a contact person for the agent who can be reached within a reasonable time frame.

(3) The individual portions of the content shall be described in simple and clear, yet detailed and exact manner.

Documentation

Article 10 (1) Ongoing services according to Article 9 par. 2 (3), rendered by the agent, which are based on the organization contract shall be documented on a regular basis and be made available to the other contracting party or a copy handed over upon request.

Section 5

Final provisions and provisions for entering into force

Gender neutral phrasing

Article 11 References to persons in this ordinance are to be understood as gender neutral.

Entry into force and transitional arrangements

Article 12 (1) This ordinance enters into force within a period of one month from the announcement. The provisions included herein are only applicable to contracts concluded at that moment in time.

(2) Existing documentation shall be made available within the meaning of Articles 6 and 7 (2) and (10). It is not mandatory to add information for the period prior to entry into force of this ordinance.

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