

1 ENGROSSED HOUSE  
2 BILL NO. 3919

By: West (Tammy) and Caldwell  
(Chad) of the House

3 and

4 Garvin of the Senate  
5  
6

7 An Act relating to assisted living centers or  
8 continuum of care facilities; defining terms;  
9 mandating disclosure from referral agencies;  
10 providing for prohibited conduct; providing duties  
11 for referral agencies; regulating compensation;  
12 providing for civil penalty; amending 63 O.S. 2021,  
13 Section 1-742, which relates to prohibited acts and  
14 penalties; adding exception; providing for  
15 codification; and providing an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-866.1 of Title 63, unless  
19 there is created a duplication in numbering, reads as follows:

20 As used in this section:

21 1. "Assisted living center" means any home or establishment  
22 offering, coordinating, or providing services to two or more persons  
23 who:

- 24 a. are domiciled therein,
- b. are unrelated to the operator,

- c. by choice or functional impairments, need assistance with personal care or nursing supervision,
- d. may need intermittent or unscheduled nursing care,
- e. may need medication assistance, and
- f. may need assistance with transfer and/or ambulation;

2. "Consumer" means an individual seeking a referral to an assisted living center or continuum of care facility on behalf of themselves or someone else as a representative;

3. "Continuum of care facility" means a home, establishment, or institution providing nursing facility services as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes and one or both of the following:

- a. assisted living center services as defined in the Continuum of Care Assisted Living Act, and
- b. adult day care center services as defined in Section 1-872 of Title 63 of the Oklahoma Statutes;

4. "Fee" means a commission paid to an individual or entity in exchange for referring a consumer to an assisted living center or continuum of care facility which results in a resident move-in;

5. "Referral" means identifying and referring a consumer to an assisted living center or continuum of care facility to facilitate an evaluation, in consultation with the community, of whether the assisted living center or continuum of care facility is a suitable option for the consumer;

1       6. "Referral agency" means an entity that provides referrals to  
2 assisted living centers or continuum of care facilities for a fee  
3 collected from a consumer or an assisted living center or continuum  
4 of care facility. The term does not include:

- 5           a. an assisted living center or continuum of care  
6           facility, its owners, or any of its employees or  
7           contractors in their individual capacity, or
- 8           b. a resident or resident's family member who refers a  
9           consumer to the assisted living center or continuum of  
10          care facility regardless of whether that individual  
11          receives a discount or other remuneration from the  
12          assisted living center or continuum of care facility.

13       SECTION 2.       NEW LAW       A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1-866.2 of Title 63, unless  
15 there is created a duplication in numbering, reads as follows:

16       A. At the time of the referral, a referral agency shall  
17 disclose the following to the consumer:

- 18           1. A description of the referral agency's service;
- 19           2. A statement on whether the consumer or the assisted living  
20 center or continuum of care facility to which the consumer is  
21 referred is responsible for paying the referral fee; and
- 22           3. A statement that the consumer may, without cause or penalty,  
23 stop using the referral agency. The referral agency shall  
24 communicate this decision by the consumer to all assisted living

1 centers or continuum of care facilities to which the consumer has  
2 been referred upon being notified by the consumer that they plan to  
3 stop using the referral agency. Notification by a consumer shall  
4 not affect the contractual agreement between the referral agency and  
5 the assisted living center or continuum of care facilities.

6 B. The referral agency shall make the disclosure statement  
7 available to a consumer in a clear and conspicuous written physical  
8 or electronic document.

9 C. The referral agency shall take into account the consumers'  
10 preferences in selecting the assisted living center or continuum of  
11 care facility to which it refers the consumer and cost shall not be  
12 used as the sole factor in that selection.

13 D. An assisted living center or continuum of care facility  
14 shall not be required to contract with or do business with a  
15 referral agency.

16 SECTION 3. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 1-866.3 of Title 63, unless  
18 there is created a duplication in numbering, reads as follows:

19 A referral agency shall not:

20 1. Refer a consumer to an assisted living center or continuum  
21 of care facility in which the referral agency has an ownership,  
22 management, or financial interest excluding a de minimis interest,  
23 such as a direct or indirect ownership of less than one percent (1%)  
24 of an assisted living center or continuum of care facility;

1           2. Hold a power of attorney or hold property in any capacity  
2 for a consumer or for whom a referral is made;

3           3. Refer a consumer to an assisted living center or continuum  
4 of care facility that, to the referral agency's knowledge, is  
5 unlicensed and is not exempt from licensing under applicable law;

6           4. Collect a fee for a consumer transferring from one location  
7 of an assisted living center or continuum of care facility to  
8 another location of the same assisted living center or continuum of  
9 care facility unless the consumer has engaged the referral agency to  
10 help facilitate the transfer to a new location and the consumer has  
11 been provided with more than one referral; or

12           5. Collect a fee for a referral after the expiration of the  
13 referral according to the contract between the referral agency and  
14 the assisted living center or continuum of care facility.

15           SECTION 4.        NEW LAW        A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1-866.4 of Title 63, unless  
17 there is created a duplication in numbering, reads as follows:

18           A referral agency shall:

19           1. Use a nationally accredited service provider to obtain  
20 criminal history record information upon hire, on a referral agency  
21 employee who has direct contact with a consumer; provided, however,  
22 that a referral agency employee who physically enters an assisted  
23 living center or continuum of care facility with the purpose of  
24 making a referral on behalf of a consumer, shall obtain a criminal

1 background check, in accordance with paragraph 1 of subsection I of  
2 Section 1-1947 of Title 63 of the Oklahoma Statutes;

3 2. Maintain liability insurance coverage for negligent acts or  
4 omissions by the referral agency or its employees;

5 3. Audit each assisted living center or continuum of care  
6 facility to which the referral agency provides referrals to ensure  
7 that any applicable license is in good standing and maintain a  
8 record of that audit;

9 4. Provide all referral agency employees whose job  
10 responsibilities require direct contact with a consumer with  
11 introductory training, including training on the referral agency's  
12 code of conduct, before the employee begins performing those  
13 responsibilities;

14 5. Provide an assisted living center or continuum of care  
15 facility with the time and date on which any referral has been made  
16 to the assisted living center or continuum of care facility in a  
17 clear and conspicuous written physical or electronic document on or  
18 before the date the consumer is admitted; and

19 6. After November 1, 2024, provide any new written contract  
20 with an assisted living center or continuum of care facility for  
21 which it is making referrals the length of time that a referral  
22 agency shall be paid from the date that the referral was made to the  
23 assisted living center or continuum of care facility not to exceed  
24 thirty-six (36) months.

1 SECTION 5. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-866.5 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4 A. A written contract entered into between a referral agency  
5 and an assisted living center or continuum of care facility may  
6 provide for the compensation of a referral agency for all referrals  
7 made to an assisted living center or continuum of care facility;  
8 such compensation may include, without limitation, amounts based on  
9 volume or value of referrals or business otherwise generated between  
10 the parties.

11 B. Compensation paid to a referral agency that complies with  
12 the requirements set forth in this section will not be grounds for  
13 disciplinary action against a long-term care administrator pursuant  
14 to OAC 310:679-10-20 or any other rule or statute regulating long-  
15 term care administrators.

16 SECTION 6. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 1-866.6 of Title 63, unless  
18 there is created a duplication in numbering, reads as follows:

19 A. A referral agency that violates this act is subject to a  
20 civil penalty in an amount equal to Five Hundred Dollars (\$500.00)  
21 for each violation.

22 B. The Attorney General or a district attorney may bring an  
23 action to recover a civil penalty imposed under subsection A of this  
24 section and to restrain and enjoin a violation of this act. The

1 Attorney General or a district attorney may recover attorney fees  
2 and litigation costs incurred in bringing the action.

3 SECTION 7. AMENDATORY 63 O.S. 2021, Section 1-742, is  
4 amended to read as follows:

5 Section 1-742. A. 1. Any person who intentionally or  
6 knowingly pays to or accepts anything of value from any person,  
7 firm, association of persons, partnership or corporation for  
8 securing or soliciting patients for any health care professional,  
9 health care provider, or other entity providing health care services  
10 in this state, upon conviction, shall be guilty of a misdemeanor and  
11 shall be punished by a fine of not less than Five Hundred Dollars  
12 (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

13 2. In addition to any other penalties or remedies provided by  
14 law:

15 a. a violation of this section by a health care  
16 professional or health care provider shall be grounds  
17 for disciplinary action by the state agency licensing,  
18 certifying or registering such professional or  
19 provider, and

20 b. the state agency licensing, certifying, or registering  
21 such professional or provider may institute an action  
22 to enjoin violation or potential violation of this  
23 section.

24 B. This section shall not be construed to prohibit:



1 1. Advertising, except that advertising which:

2 a. is false, misleading or deceptive,

3 b. advertises professional superiority or the performance  
4 of a professional service in a superior manner, and

5 c. is not readily subject to verification;

6 2. Remuneration for advertising, marketing, or other services  
7 that are provided for the purpose of securing or soliciting  
8 patients, provided the remuneration is:

9 a. set in advance,

10 b. consistent with the fair market value of the services,  
11 and

12 c. not based on the volume or value of any patient  
13 referrals or business otherwise generated between the  
14 parties; and

15 3. Any payment, business arrangements, or payments practice not  
16 prohibited by 42 U.S.C., Section 1320a-7b(b), or any regulations  
17 promulgated pursuant thereto.

18 C. This section shall not apply to licensed insurers, including  
19 but not limited to, group hospital service corporations or health  
20 maintenance organizations which reimburse, provide, offer to  
21 provide, or administer hospital, medical, dental, or other health-  
22 related benefits under a health benefits plan for which it is the  
23 payor when it is providing those services under a health benefits  
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1 plan, or referral agency as defined in paragraph 4 of Section 1 of  
2 this act.

3 D. For purposes of this section:

4 1. "Health care professional" means any person who offers or  
5 provides counseling or health or mental health care under a license,  
6 certification or registration issued pursuant to Title 59 of the  
7 Oklahoma Statutes; and

8 2. "Health care provider" means any hospital or related  
9 institution offering or providing health care services licensed  
10 pursuant to Section 1-702 of this title.

11 SECTION 8. This act shall become effective November 1, 2024.

12 Passed the House of Representatives the 14th day of March, 2024.

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Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2024.

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Presiding Officer of the Senate

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