

An Act

ENROLLED HOUSE
BILL NO. 3919

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

and

Garvin of the Senate

An Act relating to assisted living centers and continuum of care facilities; defining terms; mandating disclosure from referral agencies; providing for prohibited conduct; providing duties for referral agencies; providing compensation for referrals through written contracts; providing for civil penalty; amending 63 O.S. 2021, Section 1-742, which relates to prohibited acts and penalties; adding exception; providing for codification; and providing an effective date.

SUBJECT: Assisted living centers and continuum of care facilities

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

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

As used in this section:

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

- 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;

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

- a. an assisted living center or continuum of care facility, its owners, or any of its employees or contractors in their individual capacity, or

- b. a resident or resident's family member who refers a consumer to the assisted living center or continuum of care facility regardless of whether that individual receives a discount or other remuneration from the assisted living center or continuum of care facility.

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

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

1. A description of the referral agency's service;
2. A statement on whether the consumer or the assisted living center or continuum of care facility to which the consumer is referred is responsible for paying the referral fee; and
3. A statement that the consumer may, without cause or penalty, stop using the referral agency. The referral agency shall communicate this decision by the consumer to all assisted living centers or continuum of care facilities to which the consumer has been referred upon being notified by the consumer that they plan to stop using the referral agency. Notification by a consumer shall not affect the contractual agreement between the referral agency and the assisted living center or continuum of care facilities.

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

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

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

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

A referral agency shall not:

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

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

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

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

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

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

A referral agency shall:

1. Use a nationally accredited service provider to obtain criminal history record information upon hire, on a referral agency employee who has direct contact with a consumer; provided, however, that a referral agency employee who physically enters an assisted living center or continuum of care facility with the purpose of making a referral on behalf of a consumer, shall obtain a criminal background check, in accordance with paragraph 1 of subsection I of Section 1-1947 of Title 63 of the Oklahoma Statutes;

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

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

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

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

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

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

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

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

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

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

B. The Attorney General or a district attorney may bring an action to recover a civil penalty imposed under subsection A of this section and to restrain and enjoin a violation of this act. The Attorney General or a district attorney may recover attorney fees and litigation costs incurred in bringing the action.

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

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

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

- a. a violation of this section by a health care professional or health care provider shall be grounds for disciplinary action by the state agency licensing, certifying or registering such professional or provider, and
- b. the state agency licensing, certifying, or registering such professional or provider may institute an action to enjoin violation or potential violation of this section.

B. This section shall not be construed to prohibit:

1. Advertising, except that advertising which:

- a. is false, misleading or deceptive,
- b. advertises professional superiority or the performance of a professional service in a superior manner, and

c. is not readily subject to verification;

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

a. set in advance,

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

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

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

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

D. For purposes of this section:

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

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

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

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

Presiding Officer of the House
of Representatives

Passed the Senate the 16th day of April, 2024.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____