

## FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3919 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Tammy West

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

FLOOR SUBSTITUTE  
FOR

HOUSE BILL NO. 3919

By: West (Tammy) and Caldwell  
(Chad)

FLOOR SUBSTITUTE

An Act relating to assisted living centers or  
continuum of care facilities; defining terms;  
mandating disclosure from referral agencies;  
providing for prohibited conduct; providing duties  
for referral agencies; regulating compensation;  
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.

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

- 4            a. are domiciled therein,
- 5            b. are unrelated to the operator,
- 6            c. by choice or functional impairments, need assistance  
7                with personal care or nursing supervision,
- 8            d. may need intermittent or unscheduled nursing care,
- 9            e. may need medication assistance, and
- 10           f. may need assistance with transfer and/or ambulation;

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

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

- 18            a. assisted living center services as defined in the  
19                Continuum of Care Assisted Living Act, and
- 20            b. adult day care center services as defined in Section  
21                1-872 of Title 63 of the Oklahoma Statutes;

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

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

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

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

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

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

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

23                1. A description of the referral agency's service;  
24

1        2. A statement on whether the consumer or the assisted living  
2 center or continuum of care facility to which the consumer is  
3 referred is responsible for paying the referral fee; and

4        3. A statement that the consumer may, without cause or penalty,  
5 stop using the referral agency. The referral agency shall  
6 communicate this decision by the consumer to all assisted living  
7 centers or continuum of care facilities to which the consumer has  
8 been referred upon being notified by the consumer that they plan to  
9 stop using the referral agency. Notification by a consumer shall  
10 not affect the contractual agreement between the referral agency and  
11 the assisted living center or continuum of care facilities.

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

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

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

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

1 A referral agency shall not:

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

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

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

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

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

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

24 A referral agency shall:

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

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

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

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

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

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

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

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

17        1. An amount for all referrals made by the referral agency to  
18 the assisted living center or continuum of care facility in a  
19 specified period of time;

20        2. An amount for each referral to the assisted living center or  
21 continuum of care facility that is based on the cost of rent and  
22 care received by the consumer referred to the assisted living center  
23 or continuum of care facility by the referral agency; or

24        3. A fixed amount for each referral.



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

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

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

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

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

19 Section 1-742. A. 1. Any person who intentionally or  
20 knowingly pays to or accepts anything of value from any person,  
21 firm, association of persons, partnership or corporation for  
22 securing or soliciting patients for any health care professional,  
23 health care provider, or other entity providing health care services  
24 in this state, upon conviction, shall be guilty of a misdemeanor and

1 shall be punished by a fine of not less than Five Hundred Dollars  
2 (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

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

5 a. a violation of this section by a health care  
6 professional or health care provider shall be grounds  
7 for disciplinary action by the state agency licensing,  
8 certifying or registering such professional or  
9 provider, and

10 b. the state agency licensing, certifying, or registering  
11 such professional or provider may institute an action  
12 to enjoin violation or potential violation of this  
13 section.

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

15 1. Advertising, except that advertising which:

16 a. is false, misleading or deceptive,

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

19 c. is not readily subject to verification;

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

23 a. set in advance,  
24

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

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

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

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

17          D.     For purposes of this section:

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

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

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

59-2-10770 TJ 03/14/24