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ENGROSSED HOUSE
BILL NO. 3919

and

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. "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

1 assisted living center or continuum of care facility is a suitable
2 option for the consumer;

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

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

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

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

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

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

21 2. A statement on whether the consumer or the assisted living
22 center or continuum of care facility to which the consumer is
23 referred is responsible for paying the referral fee; and
24

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

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

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

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

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

22 A referral agency shall not:

23 1. Refer a consumer to an assisted living center or continuum
24 of care facility in which the referral agency has an ownership,

1 management, or financial interest excluding a de minimis interest,
2 such as a direct or indirect ownership of less than one percent (1%)
3 of an assisted living center or continuum of care facility;

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

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

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

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

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

21 A referral agency shall:

22 1. Use a nationally accredited service provider to obtain
23 criminal history record information upon hire, on a referral agency
24 employee who has direct contact with a consumer; provided, however,

1 that a referral agency employee who physically enters an assisted
2 living center or continuum of care facility with the purpose of
3 making a referral on behalf of a consumer, shall obtain a criminal
4 background check, in accordance with paragraph 1 of subsection I of
5 Section 1-1947 of Title 63 of the Oklahoma Statutes;

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

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

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

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

22 6. After November 1, 2024, provide any new written contract
23 with an assisted living center or continuum of care facility for
24 which it is making referrals the length of time that a referral

1 agency shall be paid from the date that the referral was made to the
2 assisted living center or continuum of care facility not to exceed
3 thirty-six (36) months.

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

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

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

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

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

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

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

8 Section 1-742. A. 1. Any person who intentionally or
9 knowingly pays to or accepts anything of value from any person,
10 firm, association of persons, partnership or corporation for
11 securing or soliciting patients for any health care professional,
12 health care provider, or other entity providing health care services
13 in this state, upon conviction, shall be guilty of a misdemeanor and
14 shall be punished by a fine of not less than Five Hundred Dollars
15 (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

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

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

23 b. the state agency licensing, certifying, or registering
24 such professional or provider may institute an action

1 to enjoin violation or potential violation of this
2 section.

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

4 1. Advertising, except that advertising which:

5 a. is false, misleading or deceptive,

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

8 c. is not readily subject to verification;

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

12 a. set in advance,

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

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

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

21 C. This section shall not apply to licensed insurers, including
22 but not limited to, group hospital service corporations or health
23 maintenance organizations which reimburse, provide, offer to
24 provide, or administer hospital, medical, dental, or other health-

1 related benefits under a health benefits plan for which it is the
2 payor when it is providing those services under a health benefits
3 plan, or referral agency as defined in paragraph 4 of Section 1 of
4 this act.

5 D. For purposes of this section:

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

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
15 April 1, 2024 - DO PASS
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