

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3808 _____
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: Ty Burns

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 FLOOR SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 3808

6 By: Burns

7 FLOOR SUBSTITUTE

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

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

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

21 As used in this section:

22 1. "Consumer" means an individual seeking a referral to a
23 senior living community on behalf of themselves or someone else as a
24 representative;

1 2. "Fee" means a commission paid to an individual, or entity in
2 exchange for referring a consumer to a senior living community which
3 results in a resident move-in;

4 3. "Referral" means identifying and referring a consumer to a
5 senior living community to facilitate an evaluation, in consultation
6 with the community, of whether the senior living community is a
7 suitable option for the consumer;

8 4. "Referral agency" means an entity that provides referrals to
9 senior living communities for a fee collected from a consumer or a
10 senior living community. The term does not include:

11 a. a senior living community, its owners, or any of its
12 employees or contractors in their individual capacity,
13 or

14 b. a resident or resident's family member who refers a
15 consumer to the senior living community regardless of
16 whether that individual receives a discount or other
17 remuneration from the senior living community; and

18 5. "Senior living community" means an adult foster care
19 facility, life care facility, assisted living facility, continuum of
20 care facility, retirement home, memory care facility, retirement
21 village, home for the aging, or other facility that provides
22 shelter, food, health care, social activities, or other personal
23 services to residents or patrons.

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

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

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

7 2. A statement on whether the consumer or the senior living
8 community to which the consumer is referred is responsible for
9 paying the referral fee; and

10 3. A statement that the consumer may, without cause or penalty,
11 stop using the referral agency. The referral agency shall
12 communicate this decision by the consumer to all senior living
13 communities to which the consumer has been referred upon being
14 notified by the consumer that they plan to stop using the referral
15 agency. Notification by a consumer shall not affect the contractual
16 agreement between the referral agency and the senior living
17 community.

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

21 C. A senior living community shall not be required to contract
22 with or do business with a referral agency.

23 D. The referral agency shall take into account the consumers'
24 preferences in selecting the senior living communities to which it

1 refers the consumer and cost shall not be used as the sole factor in
2 that selection.

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

6 A referral agency shall not:

7 1. Refer a consumer to a senior living community in which the
8 referral agency has an ownership, management, or financial interest
9 excluding a de minimis interest, such as a direct or indirect
10 ownership of less than one percent (1%) of a senior living
11 community;

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

14 3. Refer a consumer to a senior living community that, to the
15 referral agency's knowledge, is unlicensed and is not exempt from
16 licensing under applicable law;

17 4. Collect a fee for a consumer transferring from one location
18 of a senior living community to another location of the same senior
19 living community unless the consumer has engaged the referral agency
20 to help facilitate the transfer to a new location and the consumer
21 has been provided with more than one referral; or

22 5. Collect a fee for a referral after the expiration of the
23 referral according to the contract between the referral agency and
24 the senior living community.

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

4 A referral agency shall:

5 1. Use a nationally accredited service provider to obtain
6 criminal history record information, in accordance with applicable
7 law, on a referral agency employee who has direct contact with a
8 consumer;

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

11 3. Audit each senior living community to which the referral
12 agency provides referrals to ensure that any applicable license is
13 in good standing and maintain a record of that audit;

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

19 5. Provide a senior living community with the time and date on
20 which any referral has been made to the senior living community in a
21 written physical or electronic document; and

22 6. After November 1, 2024 provide in any new written contract
23 with a senior living community for which it is making referrals the
24 length of time that a referral agency shall be paid from the date

1 that the referral was made to the senior living community not to
2 exceed forty-eight (48) months.

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

6 A. A written contract entered into between a referral agency
7 and a senior living community may provide for the compensation of a
8 referral agency by a senior living community, without limitation,
9 in:

10 1. An amount for all referrals made by the referral agency to
11 the senior living community in a specified period of time;

12 2. An amount for each referral to the senior living community
13 that is based on the cost of rent and care received by the consumer
14 referred to the senior living community by the referral agency; or

15 3. A fixed amount for each referral.

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

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

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

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

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

11 Section 1-742. A. 1. Any person who intentionally or
12 knowingly pays to or accepts anything of value from any person,
13 firm, association of persons, partnership or corporation for
14 securing or soliciting patients for any health care professional,
15 health care provider, or other entity providing health care services
16 in this state, upon conviction, shall be guilty of a misdemeanor and
17 shall be punished by a fine of not less than Five Hundred Dollars
18 (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

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

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

3 b. the state agency licensing, certifying, or registering
4 such professional or provider may institute an action
5 to enjoin violation or potential violation of this
6 section.

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

8 1. Advertising, except that advertising which:

9 a. is false, misleading or deceptive,

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

12 c. is not readily subject to verification;

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

16 a. set in advance,

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

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

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

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

9 D. For purposes of this section:

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

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

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

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19 59-2-10750 TJ 03/11/24

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