

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3808

By: Burns

7
8 COMMITTEE SUBSTITUTE

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

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

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

22 As used in this section:

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

1 2. "Fee" means anything of value and includes money or other
2 valuable consideration or services or the promise of money or other
3 valuable consideration or services, received directly or indirectly
4 by a referral agency;

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

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

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

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

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

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 or consumer's representative:

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.

12 B. The referral agency may make the disclosure statement
13 available to a consumer or consumer's representative by any of the
14 following methods, which method may be selected at the sole
15 discretion of the referral agency:

16 1. A clear and conspicuous written physical or electronic
17 document;

18 2. A clear and conspicuous electronic disclosure on their
19 website; or

20 3. An oral disclosure by telephone.

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

24 A referral agency shall not:

- 1 1. Refer a consumer to a senior living community in which the
2 referral agency has an ownership, management, or financial interest
3 excluding a de minimis interest, such as a direct or indirect
4 ownership of less than one percent (1%) of a senior living
5 community;
- 6 2. Hold a power of attorney or hold property in any capacity
7 for a consumer or for whom a referral is made; or
- 8 3. Refer a consumer to a senior living community that, to the
9 referral agency's knowledge, is unlicensed and is not exempt from
10 licensing under applicable law.

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

14 A referral agency shall:

- 15 1. Use a nationally accredited service provider to obtain
16 criminal history record information, in accordance with applicable
17 law, on a referral agency employee who has direct contact with a
18 consumer or a consumer's representative;
- 19 2. Maintain liability insurance coverage for negligent acts or
20 omissions by the referral agency or its employees;
- 21 3. Audit each senior living community to which the referral
22 agency provides referrals to ensure that any applicable license is
23 in good standing and maintain a record of that audit; and

24

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

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

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

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

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

18 3. A fixed amount for each referral.

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

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

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

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

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

14 Section 1-742. A. 1. Any person who intentionally or
15 knowingly pays to or accepts anything of value from any person,
16 firm, association of persons, partnership or corporation for
17 securing or soliciting patients for any health care professional,
18 health care provider or other entity providing health care services
19 in this state, upon conviction, shall be guilty of a misdemeanor and
20 shall be punished by a fine of not less than Five Hundred Dollars
21 (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

22 2. In addition to any other penalties or remedies provided by
23 law:
24

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

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

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

11 1. Advertising, except that advertising which:

12 a. is false, misleading or deceptive,

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

15 c. is not readily subject to verification;

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

19 a. set in advance,

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

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

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

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

11 D. For purposes of this section:

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

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

19 SECTION 8. This act shall become effective November 1, 2024.
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21 COMMITTEE REPORT BY: COMMITTEE ON HEALTH SERVICES AND LONG-TERM
22 CARE, dated 02/28/2024 - DO PASS, As Amended.