By:  Raymond H.B. No. 3037

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of referral agencies for senior living communities; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle G, Title 4, Health and Safety Code, is amended by adding Chapter 327 to read as follows:

CHAPTER 327. REFERRAL AGENCIES FOR SENIOR LIVING COMMUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 327.001.  DEFINITIONS. In this chapter:

(1)  "Consumer" means an individual seeking a referral to a senior living community.

(2)  "Referral" means identifying and connecting a consumer or the consumer's representative to a senior living community to facilitate an evaluation, in consultation with the community, of whether the community is a suitable option for the consumer.

(3)  "Referral agency" means an entity that provides to a consumer referrals to senior living communities for a fee collected from the consumer or community. The term does not include:

(A)  a senior living community or its representative unless the community or its representative receives compensation for a referral; or

(B)  a resident, resident's family member, or patron of a senior living community who refers a consumer to the community regardless of whether that individual receives a discount or other remuneration from the community.

(4)  "Senior living community" means an adult foster care facility, life care facility, nursing facility licensed under Chapter 242, assisted living facility licensed under Chapter 247, retirement home, retirement village, home for the aging, or other facility that provides shelter, food, health care, social activities, or other personal services specifically for elderly individuals.

SUBCHAPTER B. REFERRAL AGENCY REGULATION

Sec. 327.051.  REQUIRED DISCLOSURE. (a) Before or at the time of the referral, a referral agency shall provide a disclosure statement to a consumer that includes:

(1)  a description of the referral agency's service;

(2)  the referral agency's contact information, including a telephone number;

(3)  an Internet website link to the referral agency's privacy policy; and

(4)  a statement on whether the consumer or the senior living community to which the consumer is referred is responsible for paying the referral fee.

(b)  The referral agency may provide the disclosure statement to a consumer or consumer's representative by:

(1)  a clear and conspicuous written physical document that is designed to provide notice of its contents;

(2)  a clear and conspicuous electronic disclosure that is designed to provide notice of its contents; or

(3)  an oral disclosure by telephone, provided that the disclosure is recorded and the recording is maintained in the records of the referral agency.

(c)  A referral agency shall maintain a record of the disclosure statement until the third anniversary of the date of the referral. The referral agency shall provide on request a copy of the record to the consumer, the consumer's representative, or a senior living community.

Sec. 327.052.  REFERRAL AGENCY PROHIBITED CONDUCT. A referral agency or referral agency employee may not:

(1)  refer a consumer to a senior living community in which the referral agency, the referral agency employee, or an immediate family member of the employee, as applicable, has an ownership, management, or financial interest;

(2)  hold a power of attorney for a consumer or hold a consumer's property in any capacity; or

(3)  knowingly refer a consumer to a senior living community that is unlicensed and is not exempt from licensing under applicable law.

Sec. 327.053.  DUTIES. A referral agency shall:

(1)  use a nationally accredited service provider to obtain criminal history record information, in accordance with applicable law, on a referral agency employee who has direct contact with a consumer or a consumer's representative;

(2)  maintain liability insurance coverage in an amount of at least $2 million per occurrence and $5 million in total annual aggregate for negligent acts or omissions by the referral agency or its employees;

(3)  at least twice a year audit each senior living community 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)  maintain a code of conduct applicable to all referral agency employees;

(5)  provide all referral agency employees whose job responsibilities require direct contact with a consumer or a consumer's representative with at least 40 hours of introductory training, including training on the referral agency's code of conduct, before the employee begins performing those responsibilities;

(6)  limit referrals to a senior living community with which the referral agency has a written contract;

(7)  engage an independent third party auditor to annually audit the referral agency's financial statements; and

(8)  maintain and publish a privacy policy on the referral agency's Internet website and a toll-free telephone number and e-mail address for privacy inquiries.

Sec. 327.054.  CERTAIN COMPENSATED REFERRALS PROHIBITED. A person employed by, providing services for, or acting on behalf of a governmental agency, hospital, or other health care facility, including a health care provider, social worker, therapist, or case manager, may not offer, provide, or accept a payment, rebate, refund, commission, preference, or discount, whether in the form of money or other consideration, as payment, compensation, or inducement for referring a consumer to a senior living community.

Sec. 327.055.  CIVIL PENALTY. (a) A referral agency that violates this chapter is subject to a civil penalty in an amount equal to not less than $250 and not more than $1,000 for each violation.

(b)  The attorney general or a district attorney may bring an action to recover a civil penalty imposed under Subsection (a) and to restrain and enjoin a violation of this chapter. The attorney general or a district attorney may recover attorney's fees and litigation costs incurred in bringing the action.

SECTION 2.  Section 102.005, Occupations Code, is amended to read as follows:

Sec. 102.005.  APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

(1)  a licensed insurer;

(2)  a governmental entity, including:

(A)  an intergovernmental risk pool established under Chapter 172, Local Government Code; and

(B)  a system as defined by Section 1601.003, Insurance Code;

(3)  a group hospital service corporation;

(4)  a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; [~~or~~]

(5)  a health care collaborative certified under Chapter 848, Insurance Code; or

(6)  a referral agency as defined by Section 327.001, Health and Safety Code.

SECTION 3.  This Act takes effect September 1, 2021.