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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 employees;
or

(B) a resident, resident's family member, or patron of a senior living community who refers a consumer to the

1 community regardless of whether that individual receives a discount
2 or other remuneration from the community.

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

10 SUBCHAPTER B. REFERRAL AGENCY REGULATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 327.053. DUTIES. A referral agency shall:

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

25 (2) maintain liability insurance coverage for
26 negligent acts or omissions by the referral agency or its
27 employees;

1 (3) at least twice a year audit each senior living
2 community to which the referral agency provides referrals to ensure
3 that any applicable license is in good standing and maintain a
4 record of that audit;

5 (4) maintain a code of conduct applicable to all
6 referral agency employees;

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

13 (6) disclose to the consumer or the consumer's
14 representative all senior living communities that best meet the
15 consumer's stated criteria that are located in the closest
16 proximity to the consumer's preferred location; and

17 (7) maintain and publish a privacy policy on the
18 referral agency's Internet website and a telephone number and
19 e-mail address for privacy inquiries.

20 Sec. 327.054. CIVIL PENALTY. (a) A referral agency that
21 violates this chapter is subject to a civil penalty in an amount
22 equal to not less than \$250 and not more than \$1,000 for each
23 violation.

24 (b) The attorney general or a district attorney may bring an
25 action to recover a civil penalty imposed under Subsection (a) and
26 to restrain and enjoin a violation of this chapter. The attorney
27 general or a district attorney may recover attorney's fees and

1 litigation costs incurred in bringing the action.

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

4 Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section
5 102.001 does not apply to:

6 (1) a licensed insurer;

7 (2) a governmental entity, including:

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

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

12 (3) a group hospital service corporation;

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

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

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

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