

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

1 patron of a senior living community who refers a consumer to the
2 community regardless of whether that individual receives a discount
3 or other remuneration from the community.

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

11 SUBCHAPTER B. REFERRAL AGENCY REGULATION

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

- 15 (1) a description of the referral agency's service;
16 (2) the referral agency's contact information,
17 including a telephone number;
18 (3) an Internet website link to the referral agency's
19 privacy policy; and
20 (4) a statement on whether the consumer or the senior
21 living community to which the consumer is referred is responsible
22 for paying the referral fee.

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

- 25 (1) a clear and conspicuous written physical document
26 that is designed to provide notice of its contents;
27 (2) a clear and conspicuous electronic disclosure that

1 is designed to provide notice of its contents; or

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

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

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

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

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

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

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

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

26 (2) maintain liability insurance coverage in an amount
27 of at least \$2 million per occurrence and \$5 million in total annual

1 aggregate for negligent acts or omissions by the referral agency or
2 its employees;

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

7 (4) maintain a code of conduct applicable to all
8 referral agency employees;

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

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

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

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

22 Sec. 327.054. CERTAIN COMPENSATED REFERRALS PROHIBITED. A
23 person employed by, providing services for, or acting on behalf of a
24 governmental agency, hospital, or other health care facility,
25 including a health care provider, social worker, therapist, or case
26 manager, may not offer, provide, or accept a payment, rebate,
27 refund, commission, preference, or discount, whether in the form of

1 money or other consideration, as payment, compensation, or
2 inducement for referring a consumer to a senior living community.

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

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

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

14 Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section
15 102.001 does not apply to:

- 16 (1) a licensed insurer;
- 17 (2) a governmental entity, including:
 - 18 (A) an intergovernmental risk pool established
 - 19 under Chapter 172, Local Government Code; and
 - 20 (B) a system as defined by Section 1601.003,
 - 21 Insurance Code;
- 22 (3) a group hospital service corporation;
- 23 (4) a health maintenance organization that
- 24 reimburses, provides, offers to provide, or administers hospital,
- 25 medical, dental, or other health-related benefits under a health
- 26 benefits plan for which it is the payor; ~~[or]~~
- 27 (5) a health care collaborative certified under

1 Chapter 848, Insurance Code; or

2 (6) a referral agency as defined by Section 327.001,

3 Health and Safety Code.

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