

BILL ANALYSIS

Senate Research Center
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H.B. 3037
By: Raymond et al. (Miles)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised regarding the lack of regulation for agencies that provide consumer referrals to senior living communities for a fee. Leaders of this industry have called for the state to implement a stringent yet workable modern regulatory scheme within which to operate, given that existing law does not account for the senior living referral industry as it functions in its current form. It has been suggested that implementing such a framework could shape the standard nationwide for protecting potential residents from bad actors in the industry. H.B. 3037 seeks to address this issue by providing for the statewide regulation of these agencies.

H.B. 3037 amends current law relating to the regulation of referral agencies for senior living communities and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 4, Health and Safety Code, by adding Chapter 327, as follows:

CHAPTER 327. REFERRAL AGENCIES FOR SENIOR LIVING COMMUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 327.001. DEFINITIONS. Defines "consumer," "referral," "referral agency," and "senior living community."

SUBCHAPTER B. REFERRAL AGENCY REGULATION

Sec. 327.051. REQUIRED DISCLOSURE. (a) Requires a referral agency, before or at the time of the referral, to 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) Authorizes the referral agency to 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) Requires a referral agency to maintain a record of the disclosure statement until the third anniversary of the date of the referral. Requires a referral agency to 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. Prohibits a referral agency or referral agency employee from:

- (1) referring 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) holding a power of attorney for a consumer or holding a consumer's property in any capacity; or
- (3) knowingly referring a consumer to a senior living community that is unlicensed and is not exempt from licensing under applicable law.

Sec. 327.053. DUTIES. Requires a referral agency to:

- (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 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) disclose to the consumer or the consumer's representative all senior living communities that best meet the consumer's stated criteria that are located in the closest proximity to the consumer's preferred location; and
- (7) maintain and publish a privacy policy on the referral agency's Internet website and a telephone number and e-mail address for privacy inquiries.

Sec. 327.054. CIVIL PENALTY. (a) Provides that 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) Authorizes the attorney general or a district attorney to bring an action to recover a civil penalty imposed under Subsection (a) and to restrain and enjoin a violation of this chapter. Authorizes the attorney general or a district attorney to recover attorney's fees and litigation costs incurred in bringing the action.

SECTION 2. Amends Section 102.005, Occupations Code, as follows:

Sec. 102.005. **APPLICABILITY TO CERTAIN ENTITIES.** Provides that Section 102.001 (Soliciting Patients; Offense) does not apply to a referral agency as defined by Section 327.001, Health and Safety Code. Makes nonsubstantive changes.

SECTION 3. Effective date: September 1, 2021.