

1-1 By: Raymond, et al. (Senate Sponsor - Miles) H.B. No. 3037  
 1-2 (In the Senate - Received from the House May 5, 2021;  
 1-3 May 12, 2021, read first time and referred to Committee on Health &  
 1-4 Human Services; May 20, 2021, reported favorably by the following  
 1-5 vote: Yeas 8, Nays 0; May 20, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the regulation of referral agencies for senior living  
 1-20 communities; providing a civil penalty.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subtitle G, Title 4, Health and Safety Code, is  
 1-23 amended by adding Chapter 327 to read as follows:

1-24 CHAPTER 327. REFERRAL AGENCIES FOR SENIOR LIVING COMMUNITIES

1-25 SUBCHAPTER A. GENERAL PROVISIONS

1-26 Sec. 327.001. DEFINITIONS. In this chapter:

1-27 (1) "Consumer" means an individual seeking a referral  
 1-28 to a senior living community.

1-29 (2) "Referral" means identifying and connecting a  
 1-30 consumer or the consumer's representative to a senior living  
 1-31 community to facilitate an evaluation, in consultation with the  
 1-32 community, of whether the community is a suitable option for the  
 1-33 consumer.

1-34 (3) "Referral agency" means an entity that provides to  
 1-35 a consumer referrals to senior living communities for a fee  
 1-36 collected from the consumer or community. The term does not  
 1-37 include:

1-38 (A) a senior living community or its employees;  
 1-39 or

1-40 (B) a resident, resident's family member, or  
 1-41 patron of a senior living community who refers a consumer to the  
 1-42 community regardless of whether that individual receives a discount  
 1-43 or other remuneration from the community.

1-44 (4) "Senior living community" means an adult foster  
 1-45 care facility, life care facility, nursing facility licensed under  
 1-46 Chapter 242, assisted living facility licensed under Chapter 247,  
 1-47 retirement home, retirement village, home for the aging, or other  
 1-48 facility that provides shelter, food, health care, social  
 1-49 activities, or other personal services specifically for elderly  
 1-50 individuals.

1-51 SUBCHAPTER B. REFERRAL AGENCY REGULATION

1-52 Sec. 327.051. REQUIRED DISCLOSURE. (a) Before or at the  
 1-53 time of the referral, a referral agency shall provide a disclosure  
 1-54 statement to a consumer that includes:

1-55 (1) a description of the referral agency's service;

1-56 (2) the referral agency's contact information,  
 1-57 including a telephone number;

1-58 (3) an Internet website link to the referral agency's  
 1-59 privacy policy; and

1-60 (4) a statement on whether the consumer or the senior  
 1-61 living community to which the consumer is referred is responsible

2-1 for paying the referral fee.

2-2 (b) The referral agency may provide the disclosure  
 2-3 statement to a consumer or consumer's representative by:

2-4 (1) a clear and conspicuous written physical document  
 2-5 that is designed to provide notice of its contents;

2-6 (2) a clear and conspicuous electronic disclosure that  
 2-7 is designed to provide notice of its contents; or

2-8 (3) an oral disclosure by telephone, provided that the  
 2-9 disclosure is recorded and the recording is maintained in the  
 2-10 records of the referral agency.

2-11 (c) A referral agency shall maintain a record of the  
 2-12 disclosure statement until the third anniversary of the date of the  
 2-13 referral. The referral agency shall provide on request a copy of the  
 2-14 record to the consumer, the consumer's representative, or a senior  
 2-15 living community.

2-16 Sec. 327.052. REFERRAL AGENCY PROHIBITED CONDUCT. A  
 2-17 referral agency or referral agency employee may not:

2-18 (1) refer a consumer to a senior living community in  
 2-19 which the referral agency, the referral agency employee, or an  
 2-20 immediate family member of the employee, as applicable, has an  
 2-21 ownership, management, or financial interest;

2-22 (2) hold a power of attorney for a consumer or hold a  
 2-23 consumer's property in any capacity; or

2-24 (3) knowingly refer a consumer to a senior living  
 2-25 community that is unlicensed and is not exempt from licensing under  
 2-26 applicable law.

2-27 Sec. 327.053. DUTIES. A referral agency shall:

2-28 (1) use a nationally accredited service provider to  
 2-29 obtain criminal history record information, in accordance with  
 2-30 applicable law, on a referral agency employee who has direct  
 2-31 contact with a consumer or a consumer's representative;

2-32 (2) maintain liability insurance coverage for  
 2-33 negligent acts or omissions by the referral agency or its  
 2-34 employees;

2-35 (3) at least twice a year audit each senior living  
 2-36 community to which the referral agency provides referrals to ensure  
 2-37 that any applicable license is in good standing and maintain a  
 2-38 record of that audit;

2-39 (4) maintain a code of conduct applicable to all  
 2-40 referral agency employees;

2-41 (5) provide all referral agency employees whose job  
 2-42 responsibilities require direct contact with a consumer or a  
 2-43 consumer's representative with at least 40 hours of introductory  
 2-44 training, including training on the referral agency's code of  
 2-45 conduct, before the employee begins performing those  
 2-46 responsibilities;

2-47 (6) disclose to the consumer or the consumer's  
 2-48 representative all senior living communities that best meet the  
 2-49 consumer's stated criteria that are located in the closest  
 2-50 proximity to the consumer's preferred location; and

2-51 (7) maintain and publish a privacy policy on the  
 2-52 referral agency's Internet website and a telephone number and  
 2-53 e-mail address for privacy inquiries.

2-54 Sec. 327.054. CIVIL PENALTY. (a) A referral agency that  
 2-55 violates this chapter is subject to a civil penalty in an amount  
 2-56 equal to not less than \$250 and not more than \$1,000 for each  
 2-57 violation.

2-58 (b) The attorney general or a district attorney may bring an  
 2-59 action to recover a civil penalty imposed under Subsection (a) and  
 2-60 to restrain and enjoin a violation of this chapter. The attorney  
 2-61 general or a district attorney may recover attorney's fees and  
 2-62 litigation costs incurred in bringing the action.

2-63 SECTION 2. Section 102.005, Occupations Code, is amended to  
 2-64 read as follows:

2-65 Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section  
 2-66 102.001 does not apply to:

2-67 (1) a licensed insurer;

2-68 (2) a governmental entity, including:

2-69 (A) an intergovernmental risk pool established

3-1 under Chapter 172, Local Government Code; and  
 3-2 (B) a system as defined by Section 1601.003,  
 3-3 Insurance Code;  
 3-4 (3) a group hospital service corporation;  
 3-5 (4) a health maintenance organization that  
 3-6 reimburses, provides, offers to provide, or administers hospital,  
 3-7 medical, dental, or other health-related benefits under a health  
 3-8 benefits plan for which it is the payor; [~~or~~]  
 3-9 (5) a health care collaborative certified under  
 3-10 Chapter 848, Insurance Code; or  
 3-11 (6) a referral agency as defined by Section 327.001,  
 3-12 Health and Safety Code.

3-13 SECTION 3. This Act takes effect September 1, 2021.

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