

BILL ANALYSIS

C.S.H.B. 3037
By: Raymond
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.H.B. 3037 seeks to address this issue by providing for the statewide regulation of these agencies.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3037 amends the Health and Safety Code to provide for the regulation of agencies that provide consumer referrals to senior living communities for a fee collected from the consumer or community. The bill specifies what constitutes a senior living community and which entities are not considered a referral agency subject to the bill's provisions.

C.S.H.B. 3037 requires a referral agency to provide a statement to a consumer, before or at the time of a referral, disclosing certain information about the agency and whether the community to which the consumer is referred is responsible for paying the referral fee. The statement must be provided to the consumer or consumer's representative by written or electronic means or by an oral disclosure over the telephone. The bill requires the agency to maintain a record of the statement until the third anniversary of the date of the referral and to provide on request a copy of the record to the consumer, the consumer's representative, or a senior living community.

C.S.H.B. 3037 prohibits a referral agency or an agency employee from doing any of the following:

- referring a consumer to a community in which the agency, the employee, or the employee's immediate family member, as applicable, has an ownership, management, or financial interest;
- holding a power of attorney for a consumer or holding a consumer's property in any capacity; or

- knowingly referring a consumer to a community that is unlicensed and is not exempt from licensing under the law.

C.S.H.B. 3037 requires a referral agency to do the following:

- use a nationally accredited service provider to obtain criminal history record information on an agency employee who has direct contact with a consumer or a consumer's representative;
- provide all employees whose job responsibilities require such direct contact with at least 40 hours of introductory training before the employee begins performing those responsibilities;
- maintain liability insurance coverage for negligent acts or omissions by the agency or its employees;
- audit at least twice a year each community to which the agency provides referrals to ensure that any applicable license is in good standing and maintain a record of each audit;
- maintain a code of conduct applicable to all agency employees;
- disclose to a consumer or the consumer's representative all communities that best meet the consumer's stated criteria that are located in the closest proximity to the consumer's preferred location;
- maintain and publish a privacy policy on its website; and
- maintain and publish a telephone number and email address for privacy inquiries.

C.S.H.B. 3037 subjects a referral agency that violates the bill's provisions to a civil penalty in an amount between \$250 and \$1,000 for each violation. The bill authorizes the attorney general or a district attorney to bring an action to recover the civil penalty and to restrain and enjoin a violation and provides for the recovery of attorney's fees and litigation costs incurred in bringing the action.

C.S.H.B. 3037 amends the Occupations Code to exempt a referral agency from provisions establishing an offense involving the solicitation of patients.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3037 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original required a referral agency to maintain liability insurance coverage for negligent acts or omissions by the referral agency or its employees in an amount of at least \$2 million per occurrence and \$5 million in total annual aggregate. The substitute retains the requirement to maintain this coverage but does not include specifications regarding coverage amounts.

The substitute revises the duties of a referral agency as follows:

- omits the requirements from the original for a referral agency to limit referrals to a community with which the agency has a written contract and to engage an independent third party auditor to annually audit the agency's financial statements; and
- includes a requirement not in the original for a referral agency to disclose to the consumer or the consumer's representative all communities that best meet the consumer's stated criteria that are located in the closest proximity to the consumer's preferred location.

The substitute does not include a specification as in the original that the telephone number a referral agency must maintain and publish is a toll-free number.

The substitute does not include a prohibition against a person employed by, providing services for, or acting on behalf of a governmental agency, hospital, or other health care facility from offering, providing, or accepting a payment, rebate, refund, commission, preference, or discount as payment, compensation, or inducement for referring a consumer to a community as was in the original.