

- SUBJECT:** Establishing regulations for referral agencies for senior communities
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 7 ayes — Frank, Hinojosa, Klick, Meza, Neave, Noble, Rose
2 nays — Hull, Shaheen
- WITNESSES:** For — Jim Rosenthal, Caring.com; Diana Martinez, Texas Assisted Living Association; (*Registered, but did not testify*: Amanda Fredriksen, AARP; Alexa Schoeman, Long-Term Care Ombudsman; Tom Nobis; Thomas Parkinson)

Against — (*Registered, but did not testify*: Michael Gill, National Placement and Referral Alliance)
- BACKGROUND:** Under Occupations Code sec. 102.001, a person commits the offense of soliciting patients if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health regulatory agency.
- DIGEST:** CSHB 3037 would provide for the regulation of senior living facility referral agencies by defining related terms, requiring certain disclosures, prohibiting certain conduct, specifying referral agency duties, and providing for a civil penalty for violations.

"Referral agency" would be defined as an entity that provides to a consumer referrals to senior living communities for a fee collected from the consumer or community. The following would not be considered a referral agency for the purposes of the bill:
- a senior living community or its employees; or
 - a resident, resident's family member, or patron of a senior living community who referred a consumer to the community, regardless

of whether that individual received a discount or other remuneration from the community.

Required disclosure. Before or after the time of a referral, a referral agency would be required to provide a disclosure statement to a consumer that included:

- a description of the agency's service;
- the agency's contact information, including a telephone number;
- an Internet website link to the agency's privacy policy; and
- a statement on whether the consumer or the senior living community to which the consumer was referred was responsible for paying the referral fee.

The referral agency could provide this disclosure statement to a consumer or the consumer's representative by a clear and conspicuous written physical document or electronic disclosure designed to provide notice of its contents or orally by telephone, provided that the disclosure was recorded and then maintained in the records of the agency.

The agency would be required to maintain a record of the statement until the third anniversary of the referral date and to provide on request a copy of the record to the consumer, consumer's representative, or a senior living community.

Prohibited conduct. A referral agency would be prohibited from:

- referring a consumer to a senior living community in which the agency, the agency's employee, or an immediate family member of the employee had 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 was unlicensed and not exempt from licensing under applicable law.

Duties. A referral agency would have to meet certain requirements

specified in the bill, including requirements to:

- use a nationally accredited service provider to obtain criminal history record information, in accordance with applicable law, on a referral agency employee who had direct contact with a consumer or a consumer's representative;
- maintain liability insurance coverage for negligent acts or omissions by the referral agency or its employees;
- audit at least twice a year each senior living community to which the agency provided referrals to ensure that any applicable license was in good standing and maintain a record of the audit;
- maintain a code of conduct applicable to all employees;
- provide all agency employees whose responsibilities required direct contact with a consumer or a consumer's representative with at least 40 hours of introductory training;
- disclose to the consumer or the consumer's representative all communities that best met the consumer's stated criteria that were located in the closest proximity to the consumer's preference; and
- maintain and publish a privacy policy on the agency's website and a telephone number and email address for privacy inquiries.

Civil penalty. An agency that violated the bill's provisions would be subject to a civil penalty of not less than \$250 and not more than \$1,000 for each violation. The attorney general or a district attorney could bring an action to recover such civil penalties and to restrain and enjoin a violation and could recover attorney's fees and litigation costs.

Other provisions. A referral agency as defined by the bill would be exempt from the Occupations Code provisions establishing an offense for solicitation of patients.

The bill would take effect September 1, 2021.

SUPPORTERS
SAY:

CSHB 3037 would help protect residents and residents' family members when looking for appropriate senior living communities by establishing regulations under which senior living community referral agencies had to

operate. Currently, the regulation of senior living referral agencies falls under a broad chapter of the Occupations Code related to solicitation of patients. Since implementation of the Occupations Code chapter, the senior living community industry has evolved and developed a need for its own statute specifically addressing the practices of referral agencies. CSHB 3037 would require specific agency disclosures, prohibit certain conduct, and specify duties for senior living referral agencies, ensuring that both future residents and their families had more comfort and confidence in making living situation decisions.

**CRITICS
SAY:**

HB 3037 would establish excessive and unnecessary regulations for senior living community referral agencies. While regulation in the interest of consumer protection can be necessary, the Occupations Code already covers potential solicitation issues that the bill seeks to address.