

February 21, 2017

Chair Keny-Guyer
House Human Services & Housing Committee
900 Court Street NE
Salem, Oregon 97301

Dear Chair Keny-Guyer & Members of the Committee,

Caring.com is a leading internet information services company that provides resources online to caregivers seeking information and support as they care for aging parents, spouses and other loved ones. Caring.com was started to help the helpers. We equip family caregivers to make better decisions, save time and money, and feel less alone – and less stressed – as they face the many challenges of caregiving. Caregiving is a journey, and to make that journey a little easier, we provide free personal, one-on-one guidance with a Family Advisor, thousands of original articles, helpful tools, a comprehensive local Senior Care Directory, and the collective wisdom of an involved community. Caring.com's carefully researched and expert-reviewed content includes advice from a team of more than 50 trusted leaders in geriatric medicine, law, finance, housing and other key areas of healthcare and eldercare.

Placing a loved one in a long-term care facility is one of the most stressful and consequential decisions an individual will ever make which is why Caring.com takes issues of transparency and consumer protection very seriously. We provide disclosure statements on our website and directly to every person that we refer to a senior living provider. We make a point of disclosing things like how we are compensated. We don't do Medicaid placements and we don't own any long-term care facilities. We spend countless hours training our staff on how to better service customers. We have a 4.5 out of 5 star rating of customer satisfaction based on 6,768 reviews over the past year. And our services are always free to consumers.

HB 2661 is a solution in search of a problem. The bill also does not take into account how we provide service to consumers. Specifically:

- Section 2 requires that a person may not provide a long-term care referral unless the person is certified by the Health Licensing Office. What is the need for a license rather than a registration? Why with the Health Licensing Office?
- Section 5(1)(a) requires a long-term care referral agency to gather particular information as a matter of statutory requirement. What justification is there for requiring these things as opposed to others?
- Section (5)(1)(b) requires referral agencies to enter into written contracts with clients. This is a misunderstanding of how the business model works – Caring.com does not enter into any contracts with customers, but rather with the long-term care facilities themselves. Caring.com ONLY provides referrals, it does not place customers in long-term care facilities. Nor does Caring.com charge customers for any of its services. Caring.com's services are completely free to customers.

- Section 5(1)(c) requires referral agencies to comply with HIPAA. It is precipitous to require referral agencies to comply with HIPAA. HIPAA applies to “covered entities” that are health care providers, health plans, and healthcare clearinghouses. Referral agencies are not those types of entities. Even assisted living facilities, to which referral agencies refer (not to mention independent living facilities), are generally not covered, according to regulatory expert Chris Apgar, CEO of Apgar & Associates in Portland, Oregon as reported in the Briefings on HIPAA journal in January 2013. <http://www.dwt.com/files/News/9c2487d5-cad2-44a9-85f5-ed8eea0b58e8/Presentation/NewsAttachment/19676893-2ba3-4895-b9d3-f17d21d6a0d5/BOH%20Jan%202013.pdf>
- Section 5(1)(J)(d) requires the referral service perform in-person screenings of all long-term care facilities to which the provider refers clients. Referral agencies take the criteria provided by customers and then present the customers with several options that meet their criteria. The customers then go visit the referrals, and decide whether they would like to sign a lease with the long term care facility, the referral agency is not involved in this process at all. Additionally, this is already regulated by OAR 411-054-0034, which already provides for extensive screening of residents for eligibility prior to move-in. HB 2661 would lead to duplicative and burdensome regulations that would not guarantee any better outcomes for consumers.
 - Finally, these provisions are directly discriminatory against internet-based agencies and would work to legislate the internet-based model out of existence. As explained previously, the internet model is based on ratings, reviews and telephonic/email conversations with the caregiver. There is no policy rationale to mandate the in-person method for referral agencies to filter choices for consumers. Referral agencies are simply providing a curated set of recommended facilities for the family to visit and enter into the mutual screening process at the facility level. The facilities themselves then conduct extensive state-mandated in-person screening of prospective residents to determine eligibility and rigorous matching before admitting a resident, plus the Department itself already conducts extensive on-site inspections of all facilities.
- Section 5(1)(J)(e) requires the long-term care referral agency to enter into a written contract with the customer. This is a misunderstanding of how the business model works – Caring.com does not enter into any contracts with customers, but rather with the long-term care facilities themselves. Caring.com ONLY provides referrals, it does not place customers in long-term care facilities. Nor does Caring.com charge customers for any of their services. Their services are completely free to customers.
- Section 5(L) requires referral agencies to take continuing education requirements including “late life diagnosis, Medicaid, powers of attorney, conservatorships, guardianships and fiduciaries, long-term care options, and vetting of long-term care providers.” The premise appears to be that referral agency advisors are not knowledgeable and are making inappropriate recommendations of facilities. That is not our experience. Caring.com for example already trains its advisors on many of those subjects. Moreover, the primary criteria referral agencies use are financial means, geography and social needs. But generally speaking we are not aware of any industry-wide data that that shows that matching is inappropriate. Before the legislature imposes new and onerous continuing education requirements it is imperative for the committee to look at what if any evidence suggest that this requirement is necessary.
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- Section 3 requires long-term care referral agencies to be licensed. However, The proponents have offered no evidence, much less statistically significant evidence, of a problem with inappropriate referrals. No survey of complaints by consumers or complaints by facilities that referral agencies are making inappropriate referrals. No evidence of complaints against referral agencies made to the state ombudsman for senior care or made to the District Attorney consumer protection units or lawsuits filed in the courts. No evidence of investigations against referral agencies conducted by any of those agencies.
 - To our knowledge, licensing is not required in Oregon for referral agencies in other industries such as nanny care, in-home care, day care, hospice care, etc. What is the rationale for requiring licensure for senior housing before and above any other referral agency business in Oregon? I would think that the impetus for licensing senior housing referral agencies would be less because here the agencies do not place the consumer in a care setting – they only refer the candidate to the facility and the facility does the admission screening under state-mandated criteria. A strong layer of consumer protection is already built into the senior housing system.
 - California just last year rejected a licensing bill for that very reason. California Governor Brown’s veto message stated: “This bill creates an expansive and costly licensing scheme for agencies that make referrals to residential care facilities for the elderly. The proponents of this measure have not made a convincing case for this new licensing structure.”
 - Why should Oregon go down this path without a compelling showing of need in the first place?
- Section 5(1)(a) requires statutorily-mandated service levels – gather information on medical history, assistance with ADL, known medications and medication management needs, known diagnoses and health concerns, reason for seeking long-term care, behaviors that require special attention, presence of mental illness (dementia, Alzheimer’s, developmental disabilities), cultural and language accommodations/activity preferences/location preferences, budget and financial assistance resources, identity of any legal or financial representatives of client. Again, the premise is that referral agency advisors are not knowledgeable and are making inappropriate recommendations of facilities. This is not our experience. What evidence is there to suggest that matching on these specific criteria is lacking? Even more to the point, the referral agencies are not doing the placement – the facilities are. And the facilities already match with extensive state-mandated criteria. Where is the evidence to suggest that the process is not working when factoring in the facility matching?
- This bill only applies to long-term care referral agencies, which leaves out an estimated 50% of all referrals made which are made not “in exchange for compensation” but rather by government employees, social workers, hospital workers, medical and legal professionals, discharge planners, etc. If this elaborate set of restrictions is so essential, then the bill has an enormous loophole – it only regulates referral agencies that receive compensation for the referral – but referrals coming from many other sources that operate without remuneration or perhaps informally for reciprocal referrals are not covered in the bill: non-profits, hospitals, discharge planners, social workers, nurses, doctors, estate planners, lawyers, county government offices, local government offices, and even facilities themselves. There is no requirement that these sources are subject to any conflict of interest protections or other than facilities have to independently verify what services facilities provide and conduct matching

under prescribed criteria and undergo training before they make referrals. IF these elements are so essential, why are all of these sources exempt?

- Section 7(1) deals with penalties. Civil penalties up to \$5,000 per violation is exorbitant. The threat of such steep penalties – for any one of the long list of provisions in the bill or any one that the Department issues on its own in the future – could threaten the economic viability of the service which is so important to helping families find care for their loved ones.

We believe the legislature should have the following information to inform their work before taking up legislation:

- How many complaints were filed with the Long-Term Care Ombudsman against long-term care referral agencies over the past three years?
- Of those complaints, are there any common themes or concerns?
- Are other referral industries regulated? Things like nanny referrals, house cleaning referrals, contractor referrals? Etc.? If not, what evidence is there to support starting to regulate long-term care referrals first?

Caring.com is committed to providing our customers with the highest level of integrity, care and transparency. HB 2661 is a solution in search of a problem, and would do nothing meaningful to increase the integrity, quality of care or transparency provided by referral agencies like Caring.com.

We urge the Committee to spend more time studying and learning the long-term care referral industry and come up with a clear problem statement before adding additional regulations.

Sincerely,



Karen Cassel
CEO
Caring.com