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February 23, 2022

To: The Honorable Delores G. Kelley  
Chair, Finance Committee

From: Office of the Attorney General's Health Education and Advocacy Unit

Re: Senate Bill 624 (Assisted Living Programs – Assisted Living Referrers- Requirements and Prohibitions): Support

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) supports Senate Bill 624 and offers a friendly amendment to further the bill's goal of strengthening consumer protections for clients of assisted living referrers. The bill appears to mandate that referrers comply with HIPAA privacy standards and security standards, but we believe clarifying language would remove potential confusion about that requirement.

The bill would require an assisted living referrer to (1) maintain general liability insurance; (2) require employees to obtain a criminal history records check; (3) sign a HIPAA agreement with the client or the client's representative; and (4) maintain a written signed and dated document between the assisted living referrer and the client or the client's representative that includes (i) the right of the client to terminate the services for any reason at any time and (ii) a requirement that the referrer communicate the cancellation of the agreement to all assisted living programs to which the client has been referred. The referrer must provide the written document to an assisted living program on or before the day a client is admitted as a resident. Both the assisted living program and the referrer must keep a copy of the document for at least one year after the client is admitted, and the assisted living program may not pay a fee to the referrer until the written document is provided to the assisted living program and after the day the agreement between the referrer and the client is terminated.

The right to terminate the services of internet-based referrers at any time would be an important protection based on information provided by the sponsor: evidently vulnerable seniors

or their representatives often do not realize that they have inadvertently given permission while navigating through a website.<sup>1</sup>

The bill provides additional important protections by prohibiting a referrer from (1) referring clients to an assisted living program if the referrer is an owner of the program, (2) having the power of attorney over a client; or (3) selling or transferring the client's or the client's representative's contact information to a third party without the written consent of the client or the client's representative.

We propose this amendment language to the sponsor at page 2, line 14:

Strike lines 14-16 and replace with “(7) Shall be deemed a covered entity for purposes of the federal Health Insurance Portability and Accountability Act of 1996 and the federal Health Information Technology for Economic and Clinical Health Act; and”

With that amendment, we ask the committee for a favorable report.

cc: Sponsor

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<sup>1</sup> Of course, misleading people into providing consent would constitute an unfair or deceptive trade practice, but, by providing for easy cancellation, this bill should decrease the number of disputes over the manner in which consent was obtained.