

20092658e1

1                   A bill to be entitled  
2           An act relating to fraud and abuse in state-funded  
3           programs; designating Miami-Dade County as a health  
4           care fraud area of special concern for certain  
5           purposes; amending s. 68.086, F.S.; authorizing rather  
6           than requiring a court to award attorney's fees and  
7           expenses to a prevailing defendant in an action  
8           brought under the Florida False Claims Act under  
9           certain circumstances; providing applicability;  
10          creating s. 408.8065, F.S.; providing additional  
11          licensure requirements for home health agencies, home  
12          medical equipment providers, and health care clinics;  
13          requiring the posting of a surety bond in a specified  
14          minimum amount under certain circumstances; imposing  
15          criminal penalties against a person who knowingly  
16          submits misleading information to the Agency for  
17          Health Care Administration in connection with  
18          applications for certain licenses; amending s.  
19          400.471, F.S.; providing limitations on the licensure  
20          of home health agencies in certain counties; providing  
21          an exception; providing an effective date.

22  
23   Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. The Legislature designates Miami-Dade County as  
26 a health care fraud crisis area for purposes of implementing  
27 increased scrutiny of home health agencies, home medical  
28 equipment providers, health care clinics, and other health care  
29 providers in Miami-Dade County in order to assist the state's

20092658e1

30 efforts to prevent Medicaid fraud, waste, and abuse in the  
31 county and throughout the state.

32 Section 2. Subsection (3) of section 68.086, Florida  
33 Statutes, is amended to read:

34 68.086 Expenses; attorney's fees and costs.—

35 (3) If the department does not proceed with an action under  
36 this act and the person bringing the action conducts the action  
37 defendant is the prevailing party, the court may shall award to  
38 the defendant its reasonable attorney's fees and costs if the  
39 defendant prevails in the action and the court finds that the  
40 claim of ~~against~~ the person bringing the action was clearly  
41 frivolous, clearly vexatious, or brought primarily for purposes  
42 of harassment.

43 Section 3. Section 2 of this act shall take effect upon  
44 becoming law and shall apply to any pending or future action  
45 brought under the Florida False Claims Act or any action pending  
46 on appeal on or after July 1, 2009.

47 Section 4. Section 408.8065, Florida Statutes, is created  
48 to read:

49 408.8065 Additional licensure requirements for home health  
50 agencies, home medical equipment providers, and health care  
51 clinics.—

52 (1) An applicant for initial licensure, or initial  
53 licensure due to a change of ownership, as a home health agency,  
54 home medical equipment provider, or health care clinic shall:

55 (a) Demonstrate financial ability to operate, as required  
56 under s. 408.810(8) and this section. If the applicant's assets,  
57 credit, and projected revenues meet or exceed projected  
58 liabilities and expenses and the applicant provides independent

20092658e1

59 evidence that the funds necessary for startup costs, working  
60 capital, and contingency financing exist and will be available  
61 as needed, the applicant has demonstrated the financial ability  
62 to operate.

63 (b) Submit pro forma financial statements, including a  
64 balance sheet, income and expense statement, and a statement of  
65 cash flows for the first 2 years of operation which provide  
66 evidence that the applicant has sufficient assets, credit, and  
67 projected revenues to cover liabilities and expenses.

68 (c) Submit a statement of the applicant's estimated startup  
69 costs and sources of funds through the break-even point in  
70 operations demonstrating that the applicant has the ability to  
71 fund all startup costs, working capital costs, and contingency  
72 financing requirements. The statement must show that the  
73 applicant has at a minimum 3 months of average projected  
74 expenses to cover startup costs, working capital costs, and  
75 contingency financing requirements. The minimum amount for  
76 contingency funding may not be less than 1 month of average  
77 projected expenses.

78  
79 All documents required under this subsection must be prepared in  
80 accordance with generally accepted accounting principles and may  
81 be in a compilation form. The financial statements must be  
82 signed by a certified public accountant.

83 (2) For initial, renewal, or change of ownership licenses  
84 for a home health agency, a home medical equipment provider, or  
85 a health care clinic, applicants and controlling interests who  
86 are nonimmigrant aliens, as described in 8 U.S.C. s. 1101, must  
87 file a surety bond of at least \$500,000, payable to the agency,

20092658e1

88 which guarantees that the home health agency, home medical  
89 equipment provider, or health care clinic will act in full  
90 conformity with all legal requirements for operation.

91 (3) In addition to the requirements of s. 408.812, any  
92 person who offers services that require licensure under part VII  
93 or part X of chapter 400, or who offers skilled services that  
94 require licensure under part III of chapter 400, without  
95 obtaining a valid license; any person who knowingly files a  
96 false or misleading license or license renewal application or  
97 who submits false or misleading information related to such  
98 application, and any person who violates or conspires to violate  
99 this section, commits a felony of the third degree, punishable  
100 as provided in s. 775.082, s. 775.083, or s. 775.084.

101 Section 5. Subsection (10) is added to section 400.471,  
102 Florida Statutes, to read:

103 400.471 Application for license; fee.-

104 (10) (a) The agency may not issue an initial license to a  
105 home health agency under part II of chapter 408 or this part for  
106 the purpose of opening a new home health agency until July 1,  
107 2010, in any county that has at least one actively licensed home  
108 health agency and a population of persons 65 years of age or  
109 older, as indicated in the most recent population estimates  
110 published by the Executive Office of the Governor, of fewer than  
111 1,200 per home health agency. In such counties, for any  
112 application received by the agency prior to July 1, 2009, which  
113 has been deemed by the agency to be complete except for proof of  
114 accreditation, the agency may issue an initial ownership license  
115 only if the applicant has applied for accreditation before May  
116 1, 2009, from an accrediting organization that is recognized by

20092658e1

117 the agency.

118 (b) Effective October 1, 2009, the agency may not issue a  
119 change of ownership license to a home health agency under part  
120 II of chapter 408 or this part until July 1, 2010, in any county  
121 that has at least one actively licensed home health agency and a  
122 population of persons 65 years of age or older, as indicated in  
123 the most recent population estimates published by the Executive  
124 Office of the Governor, of fewer than 1,200 per home health  
125 agency. In such counties, for any application received by the  
126 agency prior to October 1, 2009, which has been deemed by the  
127 agency to be complete except for proof of accreditation, the  
128 agency may issue a change of ownership license only if the  
129 applicant has applied for accreditation before August 1, 2009,  
130 from an accrediting organization that is recognized by the  
131 agency.

132 Section 6. This act shall take effect July 1, 2009.