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1
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.

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

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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

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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

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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,

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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

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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.