

Committee Substitute for
Committee Substitute for Senate Bill No. 2658

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

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

Section 1. The Legislature designates Miami-Dade County as a health care fraud crisis area for purposes of implementing increased scrutiny of home health agencies, home medical equipment providers, health care clinics, and other health care providers in Miami-Dade County in order to assist the state's efforts to prevent Medicaid fraud, waste, and abuse in the county and throughout the state.

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

68.086 Expenses; attorney's fees and costs.—

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

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

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

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

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

(a) Demonstrate financial ability to operate, as required under s. 408.810(8) and this section. If the applicant's assets, credit, and projected revenues meet or exceed projected liabilities and expenses and the applicant provides independent evidence that the funds necessary for startup costs, working capital, and contingency financing exist and will be available as needed, the applicant has demonstrated the financial ability to operate.

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

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

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

(2) For initial, renewal, or change of ownership licenses for a home health agency, a home medical equipment provider, or a health care clinic, applicants and controlling interests who are nonimmigrant aliens, as described in 8 U.S.C. s. 1101, must file a surety bond of at least \$500,000, payable to the agency, which guarantees that the home health agency, home medical equipment provider, or health care clinic will act in full conformity with all legal requirements for operation.

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

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

400.471 Application for license; fee.—

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

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

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

Approved by the Governor June 16, 2009.

Filed in Office Secretary of State June 16, 2009.