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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Amended
Agenda Item No. 14(A)(1)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: February 21, 2012

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Ordinance requiring personal injury protection medical providers in Miami-Dade County to register, setting minimum requirements for registration, providing for grounds for denial and revocation of registration, providing process for appeal of denial of revocation of registration, and providing for fees, enforcement and penalties

Ordinance 12-08

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Joe A. Martinez.

R. A. Cuevas, Jr.
County Attorney

RAC/up

Memorandum

MIAMI-DADE COUNTY

Date: February 21, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance requiring Personal Injury Protection Medical Providers to register with Miami-Dade County

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The proposed ordinance would establish a registration requirement for Personal Injury Protection (PIP) Medical Providers operating in Miami-Dade County. This fiscal impact is based on a preliminary estimated population of 250 PIP Medical Providers that meet the billing threshold outlined in the Ordinance definition. It is estimated that start-up costs of approximately $10,000 would be incurred to develop the required database, develop procedures and forms, and research and notify the affected industry. Ongoing operating costs estimated at approximately $95,000 would be incurred to intake and process applications, maintain registration files, monitor state licensure status, conduct field investigations, conduct enforcement operations and provide administrative and legal support to the program. Therefore, the total fiscal impact is projected at $105,000 in the first year, and $95,000 thereafter with an inflationary growth rate. The Department shall establish policies and procedures necessary to implement the registration process and through implementing order, charge reasonable application and registration fees.

Office of the Mayor

Fis3912

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: February 21, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 14(A)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Amended
Agenda Item No. 14(A)(1)
2-21-12

ORDINANCE NO. **12-08**

ORDINANCE REQUIRING PERSONAL INJURY PROTECTION MEDICAL PROVIDERS IN MIAMI-DADE COUNTY TO REGISTER, SETTING MINIMUM REQUIREMENTS FOR REGISTRATION, PROVIDING FOR GROUNDS FOR DENIAL AND REVOCATION OF REGISTRATION, PROVIDING PROCESS FOR APPEAL OF DENIAL OR REVOCATION OF REGISTRATION, AND PROVIDING FOR FEES, ENFORCEMENT AND PENALTIES, PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, automobile insurance fraud remains a major problem negatively affecting consumers and insurers within Miami-Dade County, as well as the State of Florida; and

WHEREAS, there has been an increase in the number of questionable accidents with inconsistent explanations as to how the accidents occurred; and

WHEREAS, according to the National Insurance Crime Bureau ("NICB"), there were 441 Questionable Claims involving staged automobile accidents in Miami-Dade County in 2009 and 508 Questionable Claims involving staged automobile accidents in 2010; and

WHEREAS, according to the NICB, from 2008 through 2010, the number of Questionable Claims in Florida involving staged automobile accidents and personal injury protection claims increased by 119%; and

WHEREAS, according to the NICB, "Personal Automobile" is the policy type that has had the most Medical Questionable Claims in the State of Florida since 2009, with a reported total of 12,517 Medical Questionable Claims, which is 88% of all Medical Questionable Claims in Florida during that time period; and

WHEREAS, according to the NICB, "Personal Injury Protection" is the loss type that has had the most Medical Questionable Claims in the State of Florida since 2009, with a reported total of 6,451 Medical Questionable Claims, which is 45% of all Medical Questionable Claims in Florida during that time period; and

WHEREAS, according to the NICB, since 2009, Miami-Dade County has the most Medical Questionable Claims in the State of Florida and is the second ranked county in the State of Florida with the most Questionable Claims involving staged accidents; and

WHEREAS, the NICB estimates that the fraud on insurance providers results in individual policy holders being charged increased insurance premiums; and

WHEREAS, Miami-Dade County currently has an estimated 2,253 medical providers billing Personal Injury Protection ("PIP") insurance providers; and

WHEREAS, pursuant to Section 1.01(A) of the Home Rule Charter of Miami-Dade County, the Board of County Commissioners has the power to establish, coordinate and enforce such regulations as are necessary for the protection of the public as well as perform any other acts which are in the common interest of the people of Miami-Dade County; and

WHEREAS, this Board of County Commissioners has determined that requiring the registration of PIP Medical Providers within Miami-Dade County will provide local oversight of these businesses and hinder fraudulent and other illegal activities related to Personal Injury Protection Medical Providers; and

WHEREAS, it is not the intent of this ordinance to interfere with legitimate medical providers treating automobile accident patients; and

WHEREAS, the Board of County Commissioners desires to provide for the public health, safety and welfare of the people of Miami-Dade County,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. That the above recitals of legislative intent and findings are fully incorporated herein as part of this ordinance.

Section 2. Sections 8A-420 through 8A-430 of the Code of Miami-Dade County, Florida are created to read as follows:

Sec. 8A-420. Purpose and Intent.

The purpose and intent of this article is to:

A. Promote the health, safety and general welfare of the residents of Miami-Dade County; and

B. Prevent fraudulent automobile insurance claims which negatively affect both consumers and insurers within Miami-Dade County through the implementation of registration requirements for certain Personal Injury Protection Medical Providers, as defined below, operating in Miami-Dade County, which treat patients allegedly injured in automobile accidents and receive a major portion of the Personal Injury Protection Medical Provider's income from personal injury protection insurance claims.

Sec. 8A-421. Definitions.

A. "Applicant" shall mean the owner or a person or persons authorized by the owner to complete a registration application to operate as a PIP Medical Provider in Miami-Dade County.

B. "Department" shall mean the Miami-Dade County Sustainability, Planning and Economic Enhancement Department or its successor department.

C. "Operating as a Personal Injury Protection Medical Provider," or "Operation of a Personal Injury Protection Medical Provider" or "Operate as a Personal Injury Protection Medical Provider" shall mean to conduct the affairs of or manage the operations of a Personal Injury Protection Medical Provider including, but not limited to, any one or more of the following:

1. Scheduling or accepting appointment(s) for services including but not limited to diagnosis, treatment, and/or therapy which are billed for payment to a PIP insurance provider;

2. Prescribing, dispensing, or administering any medicine, medical or physical treatment, medical or physical therapy, massage treatment or therapy, or acupuncture treatment or therapy;

3. Accepting payments from one or more PIP Insurance providers for any of the events listed in paragraphs 1 and 2 above; or

4. Employing or contracting with any person for compensation to work in connection with the provision of services for a PIP Medical Provider business.

D. "Person" shall mean an individual, partnership, corporation, association, or other legal entity.

E. "Personal Injury Protection Medical Provider" or "PIP Medical Provider" shall mean any person, clinic, facility, location, or other business that provides medical or physical therapy treatment to patients or clients claiming an injury from an automobile accident and which derives:

1. 90% or more of the PIP Medical Provider's monthly gross income from billing PIP Insurance providers; or

2. $200,000.00 or more in gross income during a twelve (12) month period from the billing of PIP Insurance providers.

F. "Personal Injury Protection Medical Provider" or "PIP Medical Provider" shall not mean any business or a facility:

1. Licensed as a facility pursuant to Chapter 395, Florida Statutes;

2. Where the majority of the physicians, who provide services in the facility, primarily provide surgical services for the facility;

3. Owned by a publicly held corporation whose shares are traded on a national exchange or on the over-the-counter market and whose total assets at the end of the corporation's most recent fiscal quarter exceeded $50 million;

4. Affiliated with an accredited Florida medical school for the education of physicians licensed under Chapters 458, 459, or 460 of the Florida Statutes, at which training is provided for medical, osteopathic, or chiropractic students, residents, or fellows;

5. Owned by a corporate entity exempt from federal taxation under U.S.C. 501(c) (3) or (4);

6. That perform only magnetic resonance imaging, static radiographs, computed tomography, or position emission tomography; or

7. Accredited by the Joint Commission as an Outpatient / Ambulatory Care clinic.

G. "Physical Therapy" shall mean any type of massage therapy provided in response to a doctor's prescription or direction.

H. "PIP" shall mean personal injury protection.

I. "PIP Insurance" shall mean personal injury protection insurance.

Sec. 8A-422. Registration Required.

A. All PIP Medical Providers operating within the geographic boundaries of Miami-Dade County shall be registered with the Department. Registration shall be renewed annually.

1. Proof of current registration with the County shall be prominently displayed in a common public area of all PIP Medical Provider locations.

2. Each PIP Medical Provider location shall be registered separately, regardless of whether the location is operated under the same business name or management as another PIP Medical Provider location.

Sec. 8A-423. Designated Department.

A. The Department shall:

1. Conduct the registration process;

2. Establish a database of PIP Medical Providers operating in Miami-Dade County;

3. Enforce the provisions of this article; and

4. Charge a reasonable application and registration fee for processing applications, enforcing this article, and maintaining the database.

B. The Department shall establish policies and procedures necessary to implement the registration process, maintain the database, enforce this article, and through an implementing order, charge reasonable application and registration fees.

C. The Department is authorized to inspect any PIP Medical Provider for proof of registration at any reasonable hour without prior notice. However, in no event shall any inspection violate any medical records privacy requirements, including HIPPA, or involve the inspection of private or confidential medical information without appropriate authorization or permission.

D. The Department shall provide written notice to the State of Florida of any PIP Medical Provider or any person employed or associated with a PIP Medical Provider who fails to maintain a professional and/or clinic license or registration required by state law or applicable state agency.

Sec. 8A-424. Registration Application and Process; Requirements.

A. Application Required: Any PIP Medical Provider, as defined in Section 8A-421, must complete an application available from the Department, which shall at a minimum require the applicant to provide the following information:

1. Proof of applicable professional and/or clinic license or registration required by state law, the Florida Agency for Health Care Administration, and/or the Florida Department of Health;

2. Designation of the physician who shall be responsible for complying with all requirements related to registration and Operation of the PIP Medical Provider. The designated physician must have a clear and active license under Chapters 458, 459, 460 or 466, Florida Statutes. If that physician ceases to be affiliated with the PIP Medical Provider, another physician must be so designated within fifteen (15) days.

3. A list of all persons associated with the management or Operation of the PIP Medical Provider, including persons involved with rendering medical care and/or billing PIP insurance providers, whether paid or unpaid, part-time or full-time, including all contract labor and independent contractors. This list includes, but is not limited to, all owners, operators, employees, and volunteers. For persons listed, the following additional information must be provided:

a. The person's title;

b. A copy of the person's license, if required by state law, issued by the State Department of Health or applicable agency, to engage in the practice of:

(1) Acupuncture pursuant to Chapter 457, F.S.,
(2) Medicine pursuant to Chapter 458, F.S.,
(3) Osteopathic Medicine pursuant to Chapter 459, F.S.,
(4) Chiropractic Medicine pursuant to Chapter 460, F.S.,
(5) Dentistry pursuant to Chapter 466, F.S.,
(6) Massage Therapy pursuant to Chapter 480, F.S., or
(7) Physical Therapy pursuant to Chapter 486, F.S.;

c. The person's current home address, telephone number, and date-of-birth;

d. A list of all criminal convictions, guilty pleas, or *nolo contendere*, whether misdemeanor or felony for that person;

e. A copy of a current Florida driver's license or a current government issued photo identification card issued to that person; and

f. If that person is an owner, the percentage of ownership for each owner or shareholder.

4. The property owner's name, address, and telephone number;

5. A copy of a current business tax receipt required pursuant to Chapter 205, Florida Statutes;

6. Whether the PIP Medical Provider dispenses controlled substances;

7. Any other reasonable information the Department Director deems necessary; and

8. A sworn and notarized statement from both the designated physician and the PIP Medical Provider business owner(s) attesting to the veracity and accuracy of the information provided in the application. The Department may require the designated physician and the PIP Medical Provider business owner(s) to complete an in-person interview to verify the information in the application and/or notarized statement.

B. Application Process: Within thirty (30) days of submission, the Department shall verify the information in the application and determine whether or not the applicant meets all the criteria established in subsection (A) above.

1. If the applicant satisfies all the criteria in subsection (A), the PIP Medical Provider shall be registered.

2. If the application is deemed incomplete, the applicant shall be notified in writing of the deficiencies within thirty (30) days of submission. The applicant shall have fifteen (15) days from the date of such notice to correct the deficiencies and complete the application. Failure to respond or make the corrections within the fifteen (15) days shall be considered a withdrawal of the application. The Department shall notify the applicant of

the withdrawal upon expiration of the fifteen (15) days. If the applicant corrects the deficiencies within the fifteen (15) days, the Department shall have fifteen (15) additional days to verify that the application is complete and, if complete, register the PIP Medical Provider.

3. If the applicant does not satisfy the criteria in subsection (A), the PIP Medical Provider shall not be registered. The applicant shall be notified in writing of the decision to not register the PIP Medical Provider, including the reasons for denying registration, within thirty (30) days of submission of a new or renewal application or fifteen (15) days from the date that the applicant corrects deficiencies. The applicant shall have fifteen (15) days from the date of such notice to request a hearing in writing before a Hearing Officer pursuant to Section 8CC of the Code of Miami-Dade County, Florida. The request for a hearing shall be filed with the Department. The Department Director or any PIP Medical Provider regulated by this article who is aggrieved by any decision of the Hearing Officer may appeal a final order of the Hearing Officer by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for review of administrative action.

C. Failure of the Department to meet any of the time requirements set forth herein shall not constitute an automatic registration of the PIP Medical Provider.

D. In the event that any information provided in the application changes, the designated physician and the PIP Medical Provider business owner(s) must file a notarized statement providing the updated information with the Department within fifteen (15) days of the change.

Sec. 8A-425. Additional Registration Compliance Requirements.

A. PIP Medical Provider registration is non-transferable and cannot be assigned. Whenever ownership or management of a PIP Medical Provider changes, a new application must be filed and all applicable fees paid.

B. A valid business tax receipt must be maintained by the PIP Medical Provider.

C. Any Department designee, code enforcement officer, law enforcement officer, or any other persons authorized to enforce County ordinances must be allowed access for inspection of the PIP Medical Provider premises at any reasonable hour without prior notice.

Sec. 8A-426. Registration Denial or Revocation of Registration; Grounds.

A. The Department Director may deny or revoke a PIP Medical Provider registration upon the occurrence of one or more of the following:

1. An application contains material false information or missing information;

2. The PIP Medical Provider, as a clinic and/or individual, is not registered or licensed, as applicable, in accordance with state law, or has had its registration and/or license suspended or revoked by the State of Florida;

3. A current business tax receipt is not submitted with the application for each PIP Medical Provider;

4. Failure to allow an inspection for compliance with this article by a Department designee, code enforcement officer, law enforcement officer, or any other person authorized to enforce ordinance violations in Miami-Dade County at any reasonable hour;

5. Failure of the PIP Medical Provider to notify the Department in writing of a change in the designated physician within fifteen (15) days pursuant to Section 8A-424;

6. Failure of the PIP Medical Provider to notify the Department in writing of any change in the registration application information within fifteen (15) days pursuant to Section 8A-424;

7. Failure to abide by any provision of this article; or

8. If the payment for the application fee or registration fee is invalid or uncollectible for any reason.

Sec. 8A-427. Revocation of PIP Medical Provider Registration.

A. The Department Director shall provide written notice of the decision to revoke a current registration, specifying in writing the grounds for revoking the registration. The applicant shall have fifteen (15) days from the date of such notice to request a hearing in writing before a Hearing Officer pursuant to Section 8CC of the Code of Miami-Dade County, Florida. The request for a hearing shall be filed with the Department. The Department Director or any PIP Medical Provider regulated by this article who is aggrieved by any decision of the Hearing Officer may appeal a final order of the Hearing Officer by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for review of administrative action.

B. Failure of the Department to meet any of the time requirements set forth herein shall not affect the revocation of a PIP Medical Provider registration.

Sec. 8A-428. Registration Renewal.

A. Registration required for PIP Medical Providers shall be valid for one year from the date of issuance. At least sixty (60) days prior to expiration of the registration, a renewal application must be submitted, along with a non-refundable renewal application fee. Provided the PIP Medical Provider named in the renewal application and all information on the application are in compliance with this article, a renewal registration shall be issued by the Department, after payment of an annual registration fee. Renewal registration shall only be issued to PIP Medical Providers that were previously registered and who timely file a renewal application.

Sec. 8A-429. Violation, Enforcement, and Penalties.

A. It shall be unlawful for any person to Operate as a PIP Medical Provider without prior registration. Any enforcement action or legal remedy available under controlling state law including, but not limited to, prosecution as a non-criminal

infraction with a fine not exceeding Five-Hundred Dollars ($500.00) or by imprisonment for a term not exceeding sixty (60) days or by both fine and imprisonment, may be imposed as a penalty.

B. Nothing contained herein shall prevent the County from taking such other action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this article, including but not limited to:

1. Code Enforcement action pursuant to Chapter 8CC of the Miami-Dade County Code;

2. Seeking any legal or equitable remedy available in a court of law. The Department Director is authorized to file any action in a court of competent jurisdiction to enforce the provisions of this article and to seek appropriate remedies. In any such action the Department shall be entitled to recover its reasonable costs in the enforcement of this article, including reasonable attorney fees.

Sec. 8A-430. Service of Notice.

A. Any notice required by this article shall be in writing and sent by certified mail or by regular mail if notice is returned undelivered or unclaimed, to the mailing address set forth on the application for the PIP Medical Provider registration. The mailing address set forth in the application shall be presumed the correct mailing address.

Section 3. Section 8CC-10 of the Code of Miami-Dade County, Florida is hereby amended to read as follows: [1]

Code Section	Description of Violation	Civil Penalty
>>8A-422<<	>>Operation of PIP Medical Provider Without Prior Registration<<	>>$1,000<<

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment, except as otherwise stated herein, unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: February 21, 2012

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

APA

Annery Pulgar Alfonso

Prime Sponsor: Chairman Joe A Martinez