MEMORANDUM

Agenda Item No. 11(A)(20)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: April 2, 2013

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

SUBJECT: Resolution urging The Florida Legislature not to enact language included in SB 1192 or similar legislation that preempts local government regulation of pain management clinics and health care clinics, facilities or individual medical providers that receive reimbursement under the Florida Motor Vehicle No-Fault Law

---

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.

R. A. Cuevas, Jr.
County Attorney

RAC/lmp

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: April 2, 2013

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

SUBJECT: Agenda Item No. 11(A)(20)

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 Mayor'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 _____

Agenda Item No. 11(A)(20)
4-2-13

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE NOT TO ENACT LANGUAGE INCLUDED IN SB 1192 OR SIMILAR LEGISLATION THAT PREEMPTS LOCAL GOVERNMENT REGULATION OF PAIN MANAGEMENT CLINICS AND HEALTH CARE CLINICS, FACILITIES OR INDIVIDUAL MEDICAL PROVIDERS THAT RECEIVE REIMBURSEMENT UNDER THE FLORIDA MOTOR VEHICLE NO-FAULT LAW

WHEREAS, a Senate bill has been filed for consideration during the 2013 session of the Florida Legislature, SB 1192 by Senator Denise Grimsley (R–Sebring), that preempts local regulation of the operation and activity of pain management clinics and regulation of the licensure, activity, and operation of health care clinics licensed under Part X, Chapter 400, Florida Statutes; and

WHEREAS, SB 1192 allows the registration of pain management clinics by local governments, but preempts Miami-Dade County's Pain Clinic Ordinance as it relates to the regulation of the operation and activity of pain management clinics and the regulation of the activity of, and the imposition of a levy, fee or charge upon, a physician licensed under Chapter 400, Florida Statutes, who owns, operates, or works in a pain management clinic or provides pain management services; and

WHEREAS, SB 1192 further provides that local governments or political subdivisions of the state may not enact or enforce an ordinance that imposes a levy, charge, or fee upon, or that otherwise regulates clinics licensed under Part X, Chapter 400, Florida Statute, including services provided within such facilities; and

WHEREAS, SB 1192 preempts the enforcement of Miami-Dade County's Personal Injury Protection Medical Providers Ordinance as it relates to clinics or entities licensed under Part X, Chapter 400, Florida Statutes; and

WHEREAS, pursuant to the Miami-Dade County Home Rule Charter, the Board of County Commissioners is authorized to enact regulations for the protection of the health, safety, and welfare of the residents of Miami-Dade County; and

WHEREAS, protection of the public health, safety, and welfare is a legitimate public purpose recognized by the courts of Florida and the United States; and

WHEREAS, Miami-Dade County's Pain Clinic Ordinance and Personal Injury Protection Medical Providers Ordinance intend to provide for the protection of the health, safety, and welfare of the residents of Miami-Dade County; and

WHEREAS, there are a number of pain clinics in Miami-Dade County; and

WHEREAS, a pattern of illegal drug use and distribution and increased crime has been associated with some pain clinics; and

WHEREAS, some pain clinics dispense or prescribe medically unjustified amounts of controlled substances to addicts and to people who intend to illegally sell the drugs; and

WHEREAS, since the implementation of the Pain Clinic Ordinance, Miami-Dade County has successfully implemented the registration program, and has worked with the Florida Department of Health to ensure full compliance by the pain clinics, resulting in a substantial reduction of clinics operating in Miami-Dade County; and

WHEREAS, on August 2, 2011, at the time the Pain Clinic Ordinance was adopted there were 109 pain clinics operating in Miami-Dade County, currently, due to changes in Florida law

and enforcement of existing County regulations, approximately only 53 registered, legally operating clinics remain; and

WHEREAS, in addition to crimes associated with pain clinics, automobile insurance fraud remains a major problem negatively impacting the residents of Miami-Dade County; and

WHEREAS, the National Insurance Crime Bureau reported that the total number of questionable insurance claims in Florida increased 22.5 percent from 2010 to 2012, rising from 8,723 claims to 10,693; and

WHEREAS, 49 percent of these claims were filed in South Florida's Miami-Dade, Palm Beach, and Broward counties; and

WHEREAS, personal injury protection claims were the most common type of questionable claims in those three counties, accounting for 2,534 of the 5,214 claims; and

WHEREAS, since the adoption of the Personal Injury Protection Medical Providers Ordinance, Miami-Dade County successfully implemented its registration program in June of 2012, and has registered 144 personal injury protection providers; and

WHEREAS, since the adoption of the Personal Injury Protection Medical Providers Ordinance, Miami-Dade County's Consumer Protection section, which administers the registration program, has worked closely with the Florida Department of Health, Investigative Services Unit, the Florida Department of Revenue, Division of Insurance Fraud, the Agency for Health Care Administration, the National Insurance Crime Bureau and local police departments in assisting with investigative and enforcement activities related to personal injury protection questionable medical claims; and

WHEREAS, Miami-Dade County's efforts towards the development of a comprehensive registration program provides an additional mechanism, as part of a coordinated effort, to control and prevent fraudulent insurance claims; and

WHEREAS, the preemption language contained in SB 1192 with respect to clinics licensed under Part X, Chapter 400, Florida Statutes, would bring an end to this coordinated effort and effectively shut down Miami-Dade County's personal injury protection registration program; and

WHEREAS, this Board is concerned about the rapid proliferation of pain clinics in Miami-Dade County, the pattern of illegal drug use and distribution and increased crime associated with some pain clinics, the increased deaths and addictions associated with the prolific distribution of prescription drugs for non-medical purposes and the overall nuisance characteristics of many pain clinics; and

WHEREAS, this Board is also concerned about the alarming rate of questionable personal injury protection insurance claims filed in Miami-Dade County, the fraudulent activities associated with personal injury protection clinics and providers, and the overall nuisance characteristics of many personal injury protection clinics; and

WHEREAS, this Board believes that regulating pain clinics and personal injury protection clinics within Miami-Dade County will provide local oversight of these businesses and hinder fraudulent and other illegal activities associated with these clinics; and

WHEREAS, this Board desires to provide for the public health, safety and welfare of the people of Miami-Dade County through the enforcement of its Pain Clinic Ordinance and Personal Injury Protection Medical Provider Ordinance,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature not to enact SB 1192 with language preempting:

1) Local government regulation of the activity and operation of pain management clinics; and

2) Local government regulation of the licensure, registration, activity, and operation of health care clinics or entities licensed under Part X, Chapter 400, Florida Statutes that receive reimbursement under the Florida Motor Vehicle No-Fault Law.

Section 2. Urging the Florida Legislature not to enact other legislation that would preempt local government regulation of the licensure, registration, activity, and operation of pain management clinics and/or health care clinics, facilities or individual medical providers that receive reimbursement under the Florida Motor Vehicle No-Fault Law.

Section 3. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, Senator Denise Grimsley, and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 4. Authorizes and directs the County's state lobbyists to advocate for the issues set forth in Sections 1 and 2 above, and directs the Office of Intergovernmental Affairs to amend the 2013 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Barbara J. Jordan. It was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata
Esteban L. Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd April, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. APA

Annery Pulgar Alfonso