

1 HB318
2 127363-2
3 By Representatives Buttram, Sanderford and McClendon
4 RFD: Boards, Agencies and Commissions
5 First Read: 22-MAR-11

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ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 34-14C-1, 34-14C-2, as amended by Act 2010-148, 2010 Regular Session (Acts 2010, p. 215), 34-14C-4, 34-14C-4.1, 34-14C-6, and 34-14C-8, Code of Alabama 1975, relating to the Home Medical Equipment Services Providers Board, to rename the board the Board of Home Medical Equipment; to provide for the removal of board members; to authorize the board to employ an administrator and other necessary employees, adopt a seal, and establish and charge reasonable fees; to prohibit the unlicensed practice of providing home medical equipment services; to provide for late renewal and renewal of a lapsed license; to authorize the board to deny, revoke, or suspend a license; to provide for disciplinary hearings; to provide for administrative fines, injunctions, and other penalties against violators; and in connection therewith to have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the

1 Official Recompilation of the Constitution of Alabama of 1901,
2 as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-14C-1, 34-14C-2, as amended
5 by Act 2010-148, 2010 Regular Session (Acts 2010, p. 215),
6 34-14C-4, 34-14C-4.1, 34-14C-6, and 34-14C-8 of the Code of
7 Alabama 1975, are amended to read as follows:

8 "§34-14C-1.

9 "As used in this chapter, the following terms shall
10 have the following meanings:

11 "(1) BOARD. The Board of Home Medical Equipment
12 ~~Services Providers~~ as established by this chapter.

13 "(2) HOME MEDICAL EQUIPMENT. Medical devices usable
14 in a residential setting, as defined in regulations
15 established by the board.

16 "(3) HOME MEDICAL EQUIPMENT SERVICES. The delivery,
17 installation, maintenance, replacement of, or instruction in
18 the use of medical equipment and related supplies used by a
19 sick or disabled individual to allow that individual to obtain
20 care or treatment and be maintained in a residential setting.

21 "(4) HOME MEDICAL EQUIPMENT SERVICES PROVIDER. A
22 corporation, other business entity, or person engaged in the
23 business of providing home medical equipment services, either
24 directly or through a contractual arrangement, to an unrelated
25 sick or disabled individual in the residence of that
26 individual.

1 "§34-14C-2.

2 "(a) ~~Within 90 days of August 1, 2000, the~~ The
3 Governor shall appoint a minimum of nine persons to serve on
4 the Board of Home Medical Equipment ~~Services Providers~~, such
5 persons to include a majority who are ~~representatives of the~~
6 employed in the home medical equipment ~~services~~ industry, and
7 at least one person from each of the following categories: A
8 consumer of home medical equipment services, a physician, a
9 representative from the acute-care hospital community, and a
10 representative from the home health agency community. Those
11 persons representing the ~~Home Medical Equipment Services~~
12 ~~Provider~~ home medical equipment industry shall be selected
13 from a list submitted by the Alabama Durable Medical Equipment
14 Association or its successor. Board members shall each be
15 citizens of this state and shall have no record of sanctions
16 related to fraud under federal or state law. The membership of
17 the board shall be inclusive and reflect the racial, gender,
18 geographic, urban/rural, and economic diversity of the state.
19 ~~The board shall annually report to the Legislature by the~~
20 ~~second legislative day of each regular session the extent to~~
21 ~~which the board has complied with the diversity provisions~~
22 ~~provided in this subsection.~~

23 "(b) The initial members appointed to the board
24 shall serve for terms of three to five years, with one-third
25 of the board being replaced each year, beginning in year four.
26 The terms may be renewed for successive three-year periods. An

1 appointment shall end on the anniversary date of the original
2 appointment and each member shall hold office until his or her
3 successor is appointed by the Governor.

4 "(c) Members of the board shall not be entitled to
5 compensation for service, but shall be reimbursed for
6 reasonable travel and meeting expenses, according to a budget
7 developed and approved by the board.

8 "(d) The board shall have the responsibility for
9 creating, establishing, maintaining, and enforcing regulations
10 governing the operation of home medical equipment services
11 providers, including the qualifications of inspectors, the
12 nature of inspections, and the process for appeals.

13 "(e) Any vacancy on the board ~~must~~ shall be filled
14 by the Governor within 60 days. An appointment to fill a
15 vacancy shall be for the duration of the unexpired term. If a
16 vacancy occurs among those members who represent the home
17 medical equipment ~~services provider~~ industry, the appointment
18 shall be made from a list submitted by the Alabama Durable
19 Medical Equipment Association, or its successor.

20 "(f) At the request of the board, the Governor may
21 remove a member for failing to attend three consecutive and
22 properly noticed meetings. The Governor may also remove a
23 board member for any of the following reasons:

24 "(1) Misfeasance.

25 "(2) Malfeasance.

26 "(3) Neglect of duty.

1 "(4) Conviction of a felony.

2 "(5) Permanent inability to perform official duties.

3 "(g) The board may employ an administrator, who
4 shall be exempt from the classified service of the state and
5 shall serve at the pleasure of the board, and may employ
6 attorneys, experts, investigators, and other employees as
7 necessary to discharge duties of the board and administer this
8 chapter. The board shall determine the duties and fix the
9 compensation of the administrator and other employees, subject
10 to the general laws of the state.

11 "(h) The board shall adopt a seal, which shall be
12 affixed to all licenses issued by the board, and shall have
13 all other powers necessary and proper for performing official
14 duties.

15 "(i) The board may establish and charge reasonable
16 fees relating to the administration and enforcement of this
17 chapter including, but not limited to, application,
18 processing, Internet service, copying, mailing, filing, and
19 other fees as necessary to offset costs.

20 "(j) Absent negligence, wantonness, recklessness, or
21 deliberate misconduct, members of the board are immune from
22 liability for all good faith acts performed in the exercise of
23 their duties as members of the board.

24 "§34-14C-4.

25 "(a) Except as otherwise provided in this chapter, a
26 home medical equipment services provider shall be licensed

1 annually by the board before the provider may engage in the
2 provision of home medical equipment services. In Alabama, when
3 a single business entity provides home medical equipment
4 services from more than one location within the state, each
5 such location shall be ~~required to obtain a license on its own~~
6 ~~merit~~ licensed. Out-of-state home medical equipment services
7 providers are not required to maintain a physical location in
8 state; ~~however, out-of-state~~. Out-of-state applicants must for
9 licensure shall provide a physical location meeting
10 requirements of Section 473-X-4-.01, ~~Subsection a-f,~~ of the
11 Alabama Administrative Code, ~~or its successors,~~ and may be
12 subject to inspection by the board.

13 " (b) A license applicant shall submit the
14 application for licensing or renewal to the board on a form
15 promulgated and required by the board. In-state and
16 out-of-state applicants shall pay a reasonable nonrefundable
17 fee established by the board at the time the application is
18 submitted. The board ~~shall have the authority to~~ may set
19 reasonable fees for in-state and out-of-state applicants to
20 obtain a license. ~~The license~~ Upon satisfaction of all
21 applicable standards and requirements for licensure, the board
22 shall issue a license certificate permitting the licensee to
23 engage in providing home medical equipment services ~~shall be~~
24 ~~effective upon written notification from the board that the~~
25 ~~applicant meets the standards and has complied with all~~
26 ~~requirements for licensing.~~ The certificate shall be displayed

1 prominently at each licensed location. No person, partnership,
2 or corporation shall provide home medical equipment services
3 without first obtaining a license issued by the board pursuant
4 to this chapter.

5 "(c) Accreditation by the Joint Commission on
6 Accreditation of Healthcare Organizations, the Community
7 Health Accreditation Program, or other accrediting entities
8 shall not be substituted for compliance with this chapter.

9 "(d) ~~Licenses~~ Beginning on the effective date of
10 this amendatory act, licenses issued pursuant to this chapter
11 shall expire on the anniversary date of the original license
12 August 31 of the following every year unless renewed for an
13 additional one-year period. A license may be renewed within
14 the 60-day period after August 31 upon payment of the required
15 fee and a late fee as established by rule of the board. Any
16 license that is not renewed before the end of the 60-day grace
17 period shall lapse. A lapsed license may not be renewed unless
18 the holder reapplies and satisfies current rules for initial
19 licensure.

20 "(e) Home medical equipment service providers who,
21 upon initial inspection, are found not to comply with
22 applicable licensing standards, may be issued a provisional
23 license valid for six months. The board shall advise the
24 provider of the areas of noncompliance contemporaneous with
25 the issuance of the provisional license, and shall reinspect
26 the provider for compliance between four and six months after

1 the provisional license is issued upon application and payment
2 of a reasonable reinspection fee established by the board of
3 up to one hundred fifty dollars (\$150).

4 "(f) Except as provided in this chapter, the board
5 may inspect all license applicants to determine compliance
6 with the requirements of this chapter prior to the issuance of
7 a license.

8 "(g) The board may conduct random inspections upon
9 application for renewal of a license, for cause, and as
10 necessary to ensure the integrity and effectiveness of the
11 licensing process.

12 "(h) Employees, contractors, or inspectors of the
13 board may conduct inspections of out-of-state facilities upon
14 application from out-of-state applicants for licensure and
15 renewal. Travel allowances, ~~as allowed by the Alabama State~~
16 ~~Ethics Commission~~ authorized by Sections 36-7-20 to 36-7-22,
17 inclusive, shall be provided by the out-of-state applicant for
18 all inspections conducted at the physical out-of-state
19 location.

20 "(i) At any time upon the filing of a substantive,
21 relevant complaint of a consumer of services or other
22 qualified source as identified by the board, the board may
23 inspect the operations of the provider to determine compliance
24 with the requirements of this chapter.

25 "(j) The board shall adopt and maintain standards
26 for the individuals charged with conducting ~~the~~ inspections

1 for the purpose of determining compliance with the
2 requirements of this chapter. Board employees or contractors
3 may ~~be authorized to~~ conduct inspections. Out-of-state
4 inspections shall be limited to no more than two employees,
5 contractors, or inspectors of the board per visit.

6 "(k) Upon notice of a failure to pass an inspection
7 and obtain a license, a provider shall have 30 days to appeal
8 the inspection results or be subject to penalties pursuant to
9 Section 34-14C-6. Upon appeal, a provider shall have the right
10 to an inspection review or a new inspection in accordance with
11 procedures promulgated by the board.

12 "§34-14C-4.1.

13 "The Board of Home Medical Equipment ~~Services~~
14 ~~Providers~~ may establish by rule, and charge and collect,
15 reasonable inspection fees pursuant to the Alabama
16 Administrative Procedure Act.

17 "§34-14C-6.

18 "(a) The board may deny, suspend, or revoke a
19 license as provided in this section.

20 "(b) A license may not be denied, suspended, or
21 revoked except by majority vote of the board and with prior
22 notice and opportunity for hearing in accordance with this
23 chapter and the Alabama Administrative Procedure Act.

24 "(c) The board may institute a hearing for denial,
25 suspension, or revocation of a license or any person may file
26 a complaint with the board seeking the denial, suspension, or

1 revocation of an application for licensure or license issued
2 by the board or the investigation of any person or entity
3 providing home medical equipment services. A complaint shall
4 be in a form prescribed by the board.

5 "(d) A copy of the charges, including notice of the
6 time and place of hearing, shall be served by certified mail,
7 return receipt requested, at least 21 days before the
8 scheduled hearing date to the most recent address of the
9 licensee on file with the board, or to the last known address
10 of any unlicensed person providing home medical services. If
11 the notice and opportunity for hearing is refused or the
12 return receipt has not been received by the board within 10
13 days before the scheduled hearing, the licensee may be served
14 by mailing the charges and notice by first class mail, at
15 least seven days before the hearing date, to the most recent
16 address on file with the board.

17 "(e) The board may deny, suspend, or revoke a
18 license on any of the following grounds:

19 "(1) Conviction of a felony or other criminal
20 offense involving moral turpitude.

21 "(2) Violation of any ethical standard promulgated
22 by the board.

23 "(3) Fraud or misrepresentation in obtaining the
24 license.

1 "(4) Other just and sufficient cause as determined
2 by the board, including, but not limited to, any of the
3 following:

4 "a. Violation of any rule or standard of the board.

5 "b. Making a misleading, deceptive, false, or
6 fraudulent representation to a client.

7 "c. Engaging in business practices that are harmful
8 or detrimental to the public.

9 "d. Falsifying records.

10 "e. Failing to cooperate with an inspection or with
11 an investigation conducted by the board.

12 "f. Failing to report a change of name, address,
13 control, ownership, or administration to the board within 30
14 days after the date of change.

15 "(f) The board may informally resolve any alleged
16 violation of this chapter or rule or standard of the board by
17 stipulation, agreed settlement, or consent order.

18 "(g) Any ~~(a)~~ An entity or person found to be
19 providing home medical equipment services without a license as
20 required by this chapter shall be subject to an administrative
21 fine of up to one thousand dollars (\$1,000) per day that
22 services were provided without a license. Funds collected
23 pursuant to this chapter shall be allocated to the
24 administration of ~~the program~~ this chapter.

25 "(h) Any ~~(b)~~ An entity or person found to be
26 providing home medical equipment services without a license as

1 required by this chapter may be administratively enjoined by
2 the board from providing services until such time as the
3 entity or person complies with this chapter.

4 "(i) In addition to any other disciplinary action
5 authorized by this chapter, the board may levy and collect
6 administrative fines for violations of this chapter or the
7 rules or standards of the board in an amount of up to one
8 thousand dollars (\$1,000) for each violation.

9 "(j) Any person or entity violating this chapter,
10 upon conviction, shall be guilty of a Class A misdemeanor, and
11 subject to fine or imprisonment, or both.

12 "(k) Any ~~(c)~~ An entity or person subject to the
13 penalties prescribed by subsections ~~(a)~~ and ~~(b)~~ shall be
14 entitled to ~~(g)~~ and ~~(h)~~ may pursue an appeal through the board
15 according to ~~regulations~~ rules promulgated by the board.

16 "(l) ~~(d)~~ Any hearings related to matters before the
17 board shall be conducted in Montgomery County.

18 "(m) In addition to any other penalty or
19 disciplinary action authorized by this chapter, the board may
20 seek an injunction against any person or entity found in
21 violation of this chapter. In an action for an injunction, the
22 board may demand and recover a civil penalty of fifty dollars
23 (\$50) per day for each violation, reasonable attorney fees,
24 and court costs. No civil penalty shall be awarded to the
25 board if an administrative fine is assessed pursuant to
26 subsection (g).

1 "(n) Any person aggrieved by an adverse action of
2 the board may appeal the action to the Circuit Court of
3 Montgomery County in accordance with the Alabama
4 Administrative Procedure Act.

5 "§34-14C-8.

6 ~~"The home medical equipment services providers board~~
7 shall be subject to the Alabama Sunset Law, ~~Title 41, Chapter~~
8 ~~20,~~ as an enumerated agency as provided in Section 41-20-3,
9 and shall have a termination date of October 1, 2002, and
10 every four years thereafter, unless continued pursuant to the
11 Alabama Sunset Law."

12 Section 2. Although this bill would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds, the bill is excluded from further
15 requirements and application under Amendment 621, now
16 appearing as Section 111.05 of the Official Recompilation of
17 the Constitution of Alabama of 1901, as amended, because the
18 bill defines a new crime or amends the definition of an
19 existing crime.

20 Section 3. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Boards, Agencies
and Commissions..... 22-MAR-11

Read for the second time and placed
on the calendar 2 amendments 06-APR-11

Read for the third time and passed
as amended..... 05-MAY-11

Yeas 87, Nays 0, Abstains 0

Greg Pappas
Clerk