

1 HB569
2 139348-2
3 By Representative Nordgren
4 RFD: Boards, Agencies and Commissions
5 First Read: 20-MAR-12

1 Section 1. Sections 34-14C-1, 34-14C-2, 34-14C-4,
2 34-14C-4.1, 34-14C-5, 34-14C-6, and 34-14C-8 of the Code of
3 Alabama 1975, are amended to read as follows:

4 "§34-14C-1.

5 "As used in this chapter, the following terms shall
6 have the following meanings:

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

9 "(2) HOME MEDICAL EQUIPMENT. Medical devices usable
10 in a residential setting, as defined in regulations
11 established by the board.

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

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

24 "§34-14C-2.

25 "(a) ~~Within 90 days of August 1, 2000, the~~ The
26 Governor shall appoint a minimum of nine persons to serve on
27 the Board of Home Medical Equipment ~~Services Providers~~, such

1 persons to include a majority who are ~~representatives of~~
2 employed in the home medical equipment ~~services~~ industry, and
3 at least one person from each of the following categories: A
4 consumer of home medical equipment services, a physician, a
5 representative from the acute-care hospital community, and a
6 representative from the home health agency community. Those
7 persons representing the ~~Home Medical Equipment Services~~
8 ~~Provider~~ home medical equipment industry shall be selected
9 from a list submitted by the Alabama Durable Medical Equipment
10 Association or its successor. Board members shall each be
11 citizens of this state and shall have no record of sanctions
12 related to fraud under federal or state law. The membership of
13 the board shall be inclusive and reflect the racial, gender,
14 geographic, urban/rural, and economic diversity of the state.

15 "(b) The initial members appointed to the board
16 shall serve for terms of three to five years, with one-third
17 of the board being replaced each year, beginning in year four.
18 ~~The terms may be renewed for successive three-year periods~~
19 Thereafter, subsequent appointments shall be for a term of
20 four years. No member shall serve more than two consecutive
21 terms of office. An appointment shall end on the anniversary
22 date of the original appointment and each member shall hold
23 office until his or her successor is appointed by the
24 Governor.

25 "(c) Members of the board shall not be entitled to
26 compensation for service, but shall be reimbursed for

1 reasonable travel and meeting expenses, according to a budget
2 developed and approved by the board.

3 "(d) The board shall have the responsibility for
4 creating, establishing, maintaining, and enforcing regulations
5 governing the operation of home medical equipment services
6 providers, including the qualifications of inspectors, the
7 nature of inspections, and the process for appeals.

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

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

19 "(1) Misfeasance.

20 "(2) Malfeasance.

21 "(3) Neglect of duty.

22 "(4) Conviction of a felony.

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

24 "(g) The board may employ an administrator, who
25 shall be exempt from the classified service of the state and
26 shall serve at the pleasure of the board, and may employ
27 attorneys, experts, investigators, and other employees as

1 necessary to discharge duties of the board and administer this
2 chapter. The board shall determine the duties and fix the
3 compensation of the administrator and other employees, subject
4 to the general laws of the state.

5 "(h) The board shall adopt a seal, which shall be
6 affixed to all licenses issued by the board, and shall have
7 all other powers necessary and proper for performing official
8 duties.

9 "(i) The board may establish and charge reasonable
10 fees relating to the administration and enforcement of this
11 chapter including, but not limited to, application,
12 processing, Internet service, copying, mailing, filing, and
13 other fees as necessary to offset costs.

14 "(j) ~~Members~~ Absent negligence, recklessness,
15 wantonness or deliberate misconduct, members of the board are
16 immune from liability for all good faith acts performed in the
17 exercise of their duties as members of the board.

18 "§34-14C-4.

19 "(a) Except as otherwise provided in this chapter, a
20 home medical equipment services provider shall be licensed
21 annually by the board before the provider may engage in the
22 provision of home medical equipment services. In Alabama, when
23 a single business entity provides home medical equipment
24 services from more than one location within the state, each
25 such location shall be ~~required to obtain a license on its own~~
26 ~~merit~~ licensed. ~~Out-of-state home medical equipment services~~
27 ~~providers are not required to maintain a physical location in~~

1 ~~state; however, out-of-state applicants must provide a~~
2 ~~physical location meeting requirements of Section 473-X-4-.01,~~
3 ~~Subsection a-f, Alabama Administrative Code, or its~~
4 ~~successors, and may be subject to inspection by the board~~ The
5 board shall establish, by rule, standards by which an
6 out-of-state home medical services provider shall be licensed.

7 "(b) A license applicant shall submit the
8 application for licensing or renewal to the board on a form
9 promulgated and required by the board. In-state and
10 out-of-state applicants shall pay a reasonable nonrefundable
11 fee established by the board at the time the application is
12 submitted. The board ~~shall have the authority to~~ may set
13 reasonable fees for in-state and out-of-state applicants to
14 obtain a license. ~~The license~~ Upon satisfaction of all
15 applicable standards and requirements for licensure, the board
16 shall issue a license certificate permitting the licensee to
17 engage in providing home medical equipment services ~~shall be~~
18 ~~effective upon written notification from the board that the~~
19 ~~applicant meets the standards and has complied with all~~
20 ~~requirements for licensing.~~ The certificate shall be displayed
21 prominently at each licensed location. No person, partnership,
22 or corporation shall provide home medical equipment services
23 without first obtaining a license issued by the board pursuant
24 to this chapter.

25 "(c) Accreditation by the Joint Commission on
26 Accreditation of Healthcare Organizations, the Community

1 Health Accreditation Program, or other accrediting entities
2 shall not be substituted for compliance with this chapter.

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

13 "(e) Home medical equipment service providers who,
14 upon initial inspection, are found not to comply with
15 applicable licensing standards, may be issued a provisional
16 license valid for six months. The board shall advise the
17 provider of the areas of noncompliance contemporaneous with
18 the issuance of the provisional license, and shall reinspect
19 the provider for compliance between four and six months after
20 the provisional license is issued upon application and payment
21 of a reasonable reinspection fee established by the board of
22 up to one hundred fifty dollars (\$150).

23 "(f) Except as provided in this chapter, the board
24 may inspect all license applicants to determine compliance
25 with the requirements of this chapter prior to the issuance of
26 a license.

1 "(g) The board may conduct random inspections upon
2 application for renewal of a license, for cause, and as
3 necessary to ensure the integrity and effectiveness of the
4 licensing process.

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

13 "(i) At any time upon the filing of a substantive,
14 relevant complaint of a consumer of services or other
15 qualified source as identified by the board, the board may
16 inspect the operations of the provider to determine compliance
17 with the requirements of this chapter.

18 "(j) The board shall adopt and maintain standards
19 for the individuals charged with conducting ~~the~~ inspections
20 for the purpose of determining compliance with the
21 requirements of this chapter. Board employees or contractors
22 may ~~be authorized to~~ conduct inspections. Out-of-state
23 inspections shall be limited to no more than two employees,
24 contractors, or inspectors of the board per visit.

25 "(k) Upon notice of a failure to pass an inspection
26 and obtain a license, a provider shall have 30 days to appeal
27 the inspection results or be subject to penalties pursuant to

1 Section 34-14C-6. Upon appeal, a provider shall have the right
2 to an inspection review or a new inspection in accordance with
3 procedures promulgated by the board.

4 "§34-14C-4.1.

5 "The Board of Home Medical Equipment ~~Services~~
6 ~~Providers~~ may establish by rule, and charge and collect,
7 reasonable inspection fees pursuant to the Alabama
8 Administrative Procedure Act.

9 "§34-14C-5.

10 "The licensure requirements of this chapter do not
11 apply to the following entities or practitioners:

12 "(1) Home health agencies certified by the State of
13 Alabama to participate in the Medicare and Medicaid programs.

14 "(2) Hospital based home medical equipment services,
15 whether or not the services are provided through a separate
16 corporation or other business entity.

17 "(3) Health care practitioners legally eligible to
18 order or prescribe home medical equipment, or who use home
19 medical equipment to treat patients in locations other than
20 the patient's residence, including, but not limited to,
21 physicians, nurses, physical therapists, respiratory
22 therapists, speech therapists, occupational therapists,
23 optometrists, chiropractors, and podiatrists, except for those
24 practitioners who provide home medical equipment services in a
25 patient's residence.

26 "(4) Manufacturers and wholesale distributors, when
27 not selling directly to a patient.

1 "(5) Retail community pharmacies, including
2 providers of home infusion therapy services.

3 "(6) Hospice programs, except programs which provide
4 home medical equipment services, including delivery to a
5 patient's residence.

6 "(7) Skilled nursing facilities, except facilities
7 which provide home medical equipment services, including
8 delivery to a patient's residence.

9 "(8) Governmental agencies, including fire districts
10 which provide emergency medical services, and contractors to
11 governmental agencies whose business deals only with the
12 contracted agency.

13 "(9) Mail order companies, ~~if deliveries are made~~
14 ~~only via common carriers, including the United States Postal~~
15 ~~Service~~ as defined by board rule.

16 "§34-14C-6.

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

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

23 "(c) The board may institute a hearing for denial,
24 suspension, or revocation of a license or any person may file
25 a complaint with the board seeking the denial, suspension, or
26 revocation of an application for licensure or license issued
27 by the board or the investigation of any person or entity

1 providing home medical equipment services. A complaint shall
2 be in a form prescribed by the board.

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

17 "(e) The board may invoke disciplinary action as
18 outlined in subsection (f) whenever it is established to the
19 satisfaction of the board, after a hearing as provided in this
20 section, that any person is guilty of any of the following
21 acts:

22 "(1) Violation of this chapter or a rule of the
23 board.

24 "(2) Making a material representation in furnishing
25 information to the board.

26 "(3) Making a misrepresentation to obtain licensure
27 or to otherwise violate this chapter.

1 "(4) Conviction of or entry of a plea of guilty or
2 nolo contendere to any crime that is a felony under the laws
3 of the United States, or any state or territory of the United
4 States, or to any crime that is a misdemeanor, if an essential
5 element of the crime is dishonesty or is directly related to
6 providing home medical equipment services.

7 "(5) Gross negligence or gross misconduct in
8 providing home medical equipment services.

9 "(6) Aiding, assisting, or willingly permitting
10 another person in violating this chapter or rule of the board.

11 "(7) Failing, within 30 days, to provide information
12 in response to a written request of the board.

13 "(8) Failing to cooperate with an inspection or with
14 an investigation conducted by the board.

15 "(9) Engaging in dishonorable, unethical, or
16 unprofessional conduct of a character likely to deceive,
17 defraud, or harm the public.

18 "(10) Denial, revocation, suspension, or restriction
19 of a license in another state or jurisdiction to provide home
20 medical equipment services for a reason other than failure to
21 renew the license.

22 "(11) Directly or indirectly giving to or receiving
23 from any person, firm, association, or business entity any
24 fee, commission, rebate, or other form of compensation for any
25 services not actually or personally rendered.

26 "(12) A finding that a licensee on probationary
27 status has violated the terms of the probation.

1 "(13) Willfully making or filing false records,
2 reports, or billings in the course of providing home medical
3 equipment services including, but not limited to, false
4 records, reports, or billings filed with state or federal
5 agencies or departments.

6 "(14) The use of any words, abbreviations, figures,
7 or letters with the intention of indicating practice as a home
8 medical equipment services provider without having first
9 obtained a license from this board.

10 "(15) Failure to comply with state or federal laws
11 and regulations concerning home medical equipment services
12 providers.

13 "(16) Solicitation of home medical equipment
14 services using false or misleading advertising.

15 "(17) Failure to display a license in accordance
16 with this chapter.

17 "(18) Failure to report a change of name, address,
18 control, ownership, or administration to the board within 30
19 days after the date of change.

20 "(f) When the board finds any person guilty of any
21 of the grounds set forth in subsection (e), it may enter an
22 order imposing one or more of the following penalties:

23 "(1) A letter of reprimand.

24 "(2) Imposition of probation for a period of time
25 and subject to such conditions as may be prescribed by the
26 board.

1 "(3) Denial of an application for an initial or
2 renewal license.

3 "(4) Suspension of a license for a period of time
4 established by the board, with or without automatic
5 reinstatement.

6 "(5) Revocation of a license.

7 "(6) Payment of restitution to each consumer
8 negatively affected by the prohibited act. Proof of such
9 restitution shall be a signed and notarized release executed
10 by the consumer or the estate of the consumer.

11 "(7) Assessment of the costs of the disciplinary
12 proceedings.

13 "(g) Failure to comply with any final order of the
14 board is also cause for suspension or revocation of a license.
15 The board may suspend or revoke any license which has been
16 issued based on false or fraudulent representations.

17 "(h) The board may informally resolve any alleged
18 violation of this chapter or rule of the board by stipulation,
19 agreed settlement, or consent order, in lieu of an
20 administrative hearing.

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

1 "(j) Any ~~(b)~~ An entity or person found to be
2 providing home medical equipment services without a license as
3 required by this chapter may be administratively enjoined by
4 the board from providing services until such time as the
5 entity or person complies with this chapter.

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

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

14 "(m) Any ~~(c)~~ An entity or person subject to the
15 penalties prescribed by subsections ~~(a)~~ and ~~(b)~~ shall be
16 entitled to ~~(i)~~ and ~~(j)~~ may pursue an appeal through the board
17 according to ~~regulations~~ rules promulgated by the board.

18 "(n) ~~(d)~~ Any hearings related to matters before the
19 board shall be conducted in Montgomery County.

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

1 board if an administrative fine is assessed pursuant to
2 subsection (i).

3 "(p) Upon the revocation or suspension of a license,
4 the licensee shall immediately surrender the license to the
5 board, and if the licensee fails to do so, the board may seize
6 the license.

7 "(q) Any person aggrieved by an adverse action of
8 the board may appeal the action to the Circuit Court of
9 Montgomery County in accordance with the Alabama
10 Administrative Procedure Act.

11 "§34-14C-8.

12 ~~"The home medical equipment services providers board~~
13 ~~shall be subject to the Alabama Sunset Law, Title 41, Chapter~~
14 ~~20,~~ as an enumerated agency as provided in Section 41-20-3,
15 and shall have a termination date of October 1, 2002, and
16 every four years thereafter, unless continued pursuant to the
17 Alabama Sunset Law."

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

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 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 Representatives committee on Boards, Agencies and Commissions..... 20-MAR-12

Read for the second time and placed on the calendar 1 amendment 12-APR-12

Read for the third time and passed as amended..... 02-MAY-12

Yeas 95, Nays 0, Abstains 0

Greg Pappas
Clerk