

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

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8 SYNOPSIS: Under existing law, the Home Medical
9 Equipment Services Providers Board provides for the
10 licensing and regulation of home medical equipment
11 services providers.

12 This bill would rename the board the Board
13 of Home Medical Equipment.

14 This bill would provide for the removal of
15 board members and for the authority of the board to
16 employ an administrator and other necessary
17 employees, adopt a seal, and establish and charge
18 reasonable fees.

19 This bill would prohibit the practice of
20 providing home medical equipment services without a
21 license and would provide a process for late
22 renewal of a license and renewal of a lapsed
23 license.

24 This bill would provide further for the
25 authority of the board and the grounds necessary to
26 deny, revoke, or suspend a license, and would
27 provide for disciplinary hearings, administrative

1 fines, injunctions, and other penalties against
2 violators.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 34-14C-1, 34-14C-2, as amended by
2 Act 2010-148, 2010 Regular Session (Acts 2010, p. 215),
3 34-14C-4, 34-14C-4.1, 34-14C-6, and 34-14C-8, Code of Alabama
4 1975, relating to the Home Medical Equipment Services
5 Providers Board, to rename the board the Board of Home Medical
6 Equipment; to provide for the removal of board members; to
7 authorize the board to employ an administrator and other
8 necessary employees, adopt a seal, and establish and charge
9 reasonable fees; to prohibit the unlicensed practice of
10 providing home medical equipment services; to provide for late
11 renewal and renewal of a lapsed license; to authorize the
12 board to deny, revoke, or suspend a license; to provide for
13 disciplinary hearings; to provide for administrative fines,
14 injunctions, and other penalties against violators; and in
15 connection therewith to have as its purpose or effect the
16 requirement of a new or increased expenditure of local funds
17 within the meaning of Amendment 621 of the Constitution of
18 Alabama of 1901, now appearing as Section 111.05 of the
19 Official Recompilation of the Constitution of Alabama of 1901,
20 as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 34-14C-1, 34-14C-2, as amended
23 by Act 2010-148, 2010 Regular Session (Acts 2010, p. 215),
24 34-14C-4, 34-14C-4.1, 34-14C-6, and 34-14C-8 of the Code of
25 Alabama 1975, are amended to read as follows:

26 "§34-14C-1.

1 "As used in this chapter, the following terms shall
2 have the following meanings:

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

5 "(2) HOME MEDICAL EQUIPMENT. Medical devices usable
6 in a residential setting, as defined in regulations
7 established by the board.

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

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

19 "§34-14C-2.

20 "(a) ~~Within 90 days of August 1, 2000, the~~ The
21 Governor shall appoint a minimum of nine persons to serve on
22 the Board of Home Medical Equipment ~~Services Providers~~, such
23 persons to include a majority who are ~~representatives of the~~
24 employed in the home medical equipment ~~services~~ industry, and
25 at least one person from each of the following categories: A
26 consumer of home medical equipment services, a physician, a
27 representative from the acute-care hospital community, and a

1 representative from the home health agency community. Those
2 persons representing the ~~Home Medical Equipment Services~~
3 ~~Provider~~ home medical equipment industry shall be selected
4 from a list submitted by the Alabama Durable Medical Equipment
5 Association or its successor. Board members shall each be
6 citizens of this state and shall have no record of sanctions
7 related to fraud under federal or state law. The membership of
8 the board shall be inclusive and reflect the racial, gender,
9 geographic, urban/rural, and economic diversity of the state.
10 The board shall annually report to the Legislature by the
11 second legislative day of each regular session the extent to
12 which the board has complied with the diversity provisions
13 provided in this subsection.

14 "(b) The initial members appointed to the board
15 shall serve for terms of three to five years, with one-third
16 of the board being replaced each year, beginning in year four.
17 The terms may be renewed for successive three-year periods. An
18 appointment shall end on the anniversary date of the original
19 appointment and each member shall hold office until his or her
20 successor is appointed by the Governor.

21 "(c) Members of the board shall not be entitled to
22 compensation for service, but shall be reimbursed for
23 reasonable travel and meeting expenses, according to a budget
24 developed and approved by the board.

25 "(d) The board shall have the responsibility for
26 creating, establishing, maintaining, and enforcing regulations
27 governing the operation of home medical equipment services

1 providers, including the qualifications of inspectors, the
2 nature of inspections, and the process for appeals.

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

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

14 "(1) Misfeasance.

15 "(2) Malfeasance.

16 "(3) Neglect of duty.

17 "(4) Conviction of a felony.

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

19 "(g) The board may employ an administrator, who
20 shall be exempt from the classified service of the state and
21 shall serve at the pleasure of the board, and may employ
22 attorneys, experts, investigators, and other employees as
23 necessary to discharge duties of the board and administer this
24 chapter. The board shall determine the duties and fix the
25 compensation of the administrator and other employees, subject
26 to the general laws of the state.

1 "(h) The board shall adopt a seal, which shall be
2 affixed to all licenses issued by the board, and shall have
3 all other powers necessary and proper for performing official
4 duties.

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

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

14 "§34-14C-4.

15 "(a) Except as otherwise provided in this chapter, a
16 home medical equipment services provider shall be licensed
17 annually by the board before the provider may engage in the
18 provision of home medical equipment services. In Alabama, when
19 a single business entity provides home medical equipment
20 services from more than one location within the state, each
21 such location shall be ~~required to obtain a license on its own~~
22 ~~merit~~ licensed. Out-of-state home medical equipment services
23 providers are not required to maintain a physical location in
24 state; ~~however, out-of-state.~~ Out-of-state applicants must for
25 licensure shall provide a physical location meeting
26 requirements of Section 473-X-4-.01, ~~Subsection a-f,~~ of the

1 Alabama Administrative Code, ~~or its successors,~~ and may be
2 subject to inspection by the board.

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

21 "(c) Accreditation by the Joint Commission on
22 Accreditation of Healthcare Organizations, the Community
23 Health Accreditation Program, or other accrediting entities
24 shall not be substituted for compliance with this chapter.

25 "(d) ~~Licenses~~ Beginning on the effective date of
26 this amendatory act, licenses issued pursuant to this chapter
27 shall expire on ~~the anniversary date of the original license~~

1 August 31 of the following year unless renewed for an
2 additional one-year period. A license may be renewed within
3 the 60-day period after August 31 upon payment of the required
4 fee and a late fee as established by rule of the board. Any
5 license that is not renewed before the end of the 60-day grace
6 period shall lapse. A lapsed license may not be renewed unless
7 the holder reapplies and satisfies current rules for initial
8 licensure.

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

19 "(f) Except as provided in this chapter, the board
20 may inspect all license applicants to determine compliance
21 with the requirements of this chapter prior to the issuance of
22 a license.

23 "(g) The board may conduct random inspections upon
24 application for renewal of a license, for cause, and as
25 necessary to ensure the integrity and effectiveness of the
26 licensing process.

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

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

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

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

27 "§34-14C-4.1.

1 "The Board of Home Medical Equipment ~~Services~~
2 ~~Providers~~ may establish by rule, and charge and collect,
3 reasonable inspection fees pursuant to the Alabama
4 Administrative Procedure Act.

5 "§34-14C-6.

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

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

12 "(c) The board may institute a hearing for denial,
13 suspension, or revocation of a license or any person may file
14 a complaint with the board seeking the denial, suspension, or
15 revocation of an application for licensure or license issued
16 by the board or the investigation of any person or entity
17 providing home medical equipment services. A complaint shall
18 be in a form prescribed by the board.

19 "(d) A copy of the charges, including notice of the
20 time and place of hearing, shall be served by certified mail,
21 return receipt requested, at least 21 days before the
22 scheduled hearing date to the most recent address of the
23 licensee on file with the board, or to the last known address
24 of any unlicensed person providing home medical services. If
25 the notice and opportunity for hearing is refused or the
26 return receipt has not been received by the board within 10
27 days before the scheduled hearing, the licensee may be served

1 by mailing the charges and notice by first class mail, at
2 least seven days before the hearing date, to the most recent
3 address on file with the board.

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

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

8 "(2) Violation of any ethical standard promulgated
9 by the board.

10 "(3) Fraud or misrepresentation in obtaining the
11 license.

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

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

16 "b. Making a misleading, deceptive, false, or
17 fraudulent representation to a client.

18 "c. Engaging in business practices that are harmful
19 or detrimental to the public.

20 "d. Falsifying records.

21 "e. Failing to cooperate with an inspection or with
22 an investigation conducted by the board.

23 "f. Failing to report a change of name, address,
24 control, ownership, or administration to the board within 30
25 days after the date of change.

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

4 "(g) Any ~~(a)~~ An entity or person found to be
5 providing home medical equipment services without a license as
6 required by this chapter shall be subject to an administrative
7 fine of up to one thousand dollars (\$1,000) per day that
8 services were provided without a license. Funds collected
9 pursuant to this chapter shall be allocated to the
10 administration of ~~the program~~ this chapter.

11 "(h) Any ~~(b)~~ An entity or person found to be
12 providing home medical equipment services without a license as
13 required by this chapter may be administratively enjoined by
14 the board from providing services until such time as the
15 entity or person complies with this chapter.

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

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

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

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

3 "(m) In addition to any other penalty or
4 disciplinary action authorized by this chapter, the board may
5 seek an injunction against any person or entity found in
6 violation of this chapter. In an action for an injunction, the
7 board may demand and recover a civil penalty of fifty dollars
8 (\$50) per day for each violation, reasonable attorney fees,
9 and court costs. No civil penalty shall be awarded to the
10 board if an administrative fine is assessed pursuant to
11 subsection (g).

12 "(n) Any person aggrieved by an adverse action of
13 the board may appeal the action to the Circuit Court of
14 Montgomery County in accordance with the Alabama
15 Administrative Procedure Act.

16 "\$34-14C-8.

17 "~~The home medical equipment services providers board~~
18 shall be subject to the Alabama Sunset Law, ~~Title 41, Chapter~~
19 ~~20,~~ as an enumerated agency as provided in Section 41-20-3,
20 and shall have a termination date of October 1, 2002, and
21 every four years thereafter, unless continued pursuant to the
22 Alabama Sunset Law."

23 Section 2. Although this bill would have as its
24 purpose or effect the requirement of a new or increased
25 expenditure of local funds, the bill is excluded from further
26 requirements and application under Amendment 621, now
27 appearing as Section 111.05 of the Official ReCompilation of

1 the Constitution of Alabama of 1901, as amended, because the
2 bill defines a new crime or amends the definition of an
3 existing crime.

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