

1 HB226  
2 156339-2  
3 By Representative Johnson (R)  
4 RFD: Boards, Agencies and Commissions  
5 First Read: 14-JAN-14



1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 34-14C-1, 34-14C-2, 34-14C-3,  
3 34-14C-4, 34-14C-4.1, 34-14C-5, 34-14C-6, 34-14C-7, and  
4 34-14C-8 of the Code of Alabama 1975, are amended to read as  
5 follows:

6 "§34-14C-1.

7 "As used in this chapter, the following terms shall  
8 have the following meanings:

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

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

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

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

26 "§34-14C-2.

1           " (a) ~~Within 90 days of August 1, 2000, the~~ The  
2 Governor shall appoint a minimum of nine persons to serve on  
3 the Board of Home Medical Equipment ~~Services Providers~~, such  
4 persons to include a majority who are ~~representatives of~~  
5 employed in the home medical equipment ~~services~~ industry, and  
6 at least one person from each of the following categories: A  
7 consumer of home medical equipment services, a physician, a  
8 representative from the acute-care hospital community, and a  
9 representative from the home health agency community. Those  
10 persons ~~representing~~ employed in the Home Medical Equipment  
11 ~~Services Provider~~ home medical equipment industry shall be  
12 selected from a list submitted by the Alabama Durable Medical  
13 Equipment Association, or its successor. The consumer member  
14 shall be selected from a list of names submitted by the  
15 Governor's Office on Disability, or its successor. The  
16 physician member shall be selected from a list of names  
17 submitted by the Medical Association of Alabama, or its  
18 successor. The acute-care hospital community member shall be  
19 selected from a list submitted by the Alabama Hospital  
20 Association, or its successor. The home health agency  
21 community member shall be selected from a list of names  
22 submitted by the Home Care Association of Alabama, or its  
23 successor. All lists submitted for nominations shall include  
24 at least two names for each appointed position to be filled.  
25 Board members shall each be citizens of this state and shall  
26 have no record of sanctions related to fraud under federal or  
27 state law. The membership of the board shall be inclusive and

1 reflect the racial, gender, geographic, urban/rural, and  
2 economic diversity of the state.

3 "(b) The initial members appointed to the board  
4 shall serve for terms of three to five years, with one-third  
5 of the board being replaced each year, beginning in year four.  
6 ~~The terms may be renewed for successive three-year periods.~~  
7 Thereafter, subsequent appointments shall be for a term of  
8 four years. No member shall serve more than two consecutive  
9 terms of office. An appointment shall end on October 1, four  
10 years from the date of the last term, and each member shall  
11 hold office until his or her successor is appointed by the  
12 Governor.

13 "(c) Members of the board shall not be entitled to  
14 compensation for service, but shall be reimbursed for  
15 reasonable travel and meeting expenses, according to a budget  
16 developed and approved by the board.

17 "(d) The board shall have the responsibility for  
18 creating, establishing, maintaining, and enforcing regulations  
19 governing the operation of home medical equipment services  
20 providers, including the qualifications of inspectors, the  
21 nature of inspections, and the process for appeals.

22 "(e) ~~Any vacancy on the board must be filled by the~~  
23 ~~Governor within 60 days.~~ Whenever a vacancy occurs on the  
24 board due to the death or resignation of a currently appointed  
25 board member, or other like cause, the vacancy shall be filled  
26 by appointment by the Governor for the remainder of the  
27 unexpired term of the member, as provided under subsection

1 (b). If a vacancy occurs among those members who ~~represent~~ are  
2 employed in the home medical equipment services provider  
3 industry, the appointment shall be made from a list submitted  
4 by the Alabama Durable Medical Equipment Association or its  
5 successor.

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

10 "(1) Misfeasance.

11 "(2) Malfeasance.

12 "(3) Neglect of duty.

13 "(4) Conviction of a felony.

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

15 ~~"(g) The board may employ an executive director, who~~  
16 ~~shall be in the unclassified service of the state, as defined~~  
17 ~~in the Merit System Act, and shall serve at the pleasure of~~  
18 ~~the board, and may employ attorneys, experts, inspectors,~~  
19 ~~investigators, and other employees as necessary to discharge~~  
20 ~~the duties of the board and administer this chapter. The board~~  
21 ~~shall determine the duties and fix the compensation of the~~  
22 ~~executive director and other employees, subject to the general~~  
23 ~~laws of the state.~~

24 "(g) The board may hire personnel necessary to carry  
25 out the provisions of this chapter. With the exception of the  
26 executive director, all personnel shall be subject to the  
27 provisions of the state Merit System Act.

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, copying, mailing, filing, and other fees as  
9 necessary to offset costs.

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

14           "§34-14C-3.

15           ~~"(a) Through consultation with current members in~~  
16 ~~good standing of the Alabama Durable Medical Equipment~~  
17 ~~Association or its successor, the~~ The board shall adopt  
18 regulations that specify the medical equipment to be included  
19 in this chapter, set standards for the licensure of entities  
20 which provide home medical equipment services, and govern the  
21 safety and quality of home medical equipment service  
22 providers.

23           "(b) All home medical equipment services providers  
24 shall:

25           "(1) Comply with all applicable federal and state  
26 laws and regulations governing the safety of home medical  
27 equipment services provider facilities and delivery vehicles,

1 the safety and quality of home medical equipment, and the  
2 safety, quality, and effectiveness of home medical equipment  
3 service procedures.

4 "(2) Comply with any additional standards and  
5 testing requirements, as duly promulgated by the board and  
6 required for licensure.

7 "§34-14C-4.

8 "(a) Except as otherwise provided in this chapter, a  
9 home medical equipment services provider shall be licensed  
10 annually by the board before the provider may engage in the  
11 provision of home medical equipment services. In Alabama, when  
12 a single business entity provides home medical equipment  
13 services from more than one location within the state, each  
14 such location shall be ~~required to obtain a license on its own~~  
15 merit licensed. ~~Out-of-state home medical equipment services~~  
16 ~~providers are not required to maintain a physical location in~~  
17 ~~state; however, out-of-state applicants must provide a~~  
18 ~~physical location meeting requirements of Section 473-X-4-.01,~~  
19 ~~Subsection a-f, Alabama Administrative Code, or its~~  
20 ~~successors, and may be subject to inspection by the board. A~~  
21 provider of home medical equipment services that has a  
22 principal place of business outside this state shall maintain  
23 at least one physical location within this state, each of  
24 which shall be licensed.

25 "(b) A license applicant shall submit the  
26 application for licensing or renewal to the board on a form  
27 promulgated and required by the board. ~~In-state and~~



1 ~~out-of-state applicants~~ Applicants shall pay a reasonable  
2 nonrefundable fee established by the board at the time the  
3 application is submitted. The board shall have the authority  
4 to set reasonable fees for ~~in-state and out-of-state~~  
5 applicants to obtain a license. ~~The license~~ Upon satisfaction  
6 of all applicable standards and requirements for licensure,  
7 the board shall issue a license certificate permitting the  
8 licensee to engage in providing home medical equipment  
9 services ~~shall be effective upon written notification from the~~  
10 ~~board that the applicant meets the standards and has complied~~  
11 ~~with all requirements for licensing.~~ The certificate shall be  
12 displayed prominently at each licensed location. No person,  
13 partnership, corporation, or other legal entity that is not  
14 otherwise exempted under this chapter shall provide home  
15 medical equipment services without first obtaining a license  
16 issued by the board.

17 "(c) Accreditation by the Joint Commission on  
18 Accreditation of Healthcare Organizations, the Community  
19 Health Accreditation Program, or other accrediting entities  
20 shall not be substituted for compliance with this chapter.

21 "(d) ~~Licenses~~ Commencing on the effective date of  
22 the act amending this subsection, licenses issued pursuant to  
23 this chapter shall expire on ~~the anniversary date of the~~  
24 ~~original license unless renewed for an additional one-year~~  
25 ~~period~~ August 31 of the year following issuance. A license may  
26 be renewed within the 60-day period after August 31 upon  
27 payment of both the required fee and a late fee as established

1 by rule of the board. Any license that is not renewed before  
2 the end of the 60-day grace period shall lapse. A lapsed  
3 license may not be renewed unless the holder reapplies and  
4 satisfies then current requirements for initial licensure.

5 ~~"(e) Home medical equipment service providers~~  
6 License applicants who, upon initial inspection, are found not  
7 to comply with applicable licensing standards, ~~may be issued a~~  
8 ~~provisional license valid for six months. The board shall~~  
9 ~~advise the provider~~ shall be notified by the board of the  
10 areas of noncompliance ~~contemporaneous with the issuance of~~  
11 ~~the provisional license,~~ and shall ~~reinspect the provider~~ be  
12 reinspected for compliance ~~between four and six months after~~  
13 ~~the provisional license is issued~~ upon application and payment  
14 of a reasonable reinspection fee established by the board of  
15 up to ~~one three hundred fifty dollars (\$150)~~ (\$300).

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

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

24 ~~"(h) Employees, contractors, or inspectors of the~~  
25 ~~board may conduct inspections of out-of-state facilities upon~~  
26 ~~application from out-of-state applicants for licensure and~~  
27 ~~renewal. Travel allowances, as allowed by the Alabama State~~

1 ~~Ethics Commission, shall be provided by the out-of-state~~  
2 ~~applicant for all inspections conducted at the physical~~  
3 ~~out-of-state location.~~

4           "~~(i)~~(h) At any time upon the filing of a  
5 substantive, relevant complaint of a consumer of services or  
6 other qualified source as identified by the board, the board  
7 may inspect the operations of the provider to determine  
8 compliance with the requirements of this chapter.

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

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

22           "§34-14C-4.1.

23           "The Board of Home Medical Equipment ~~Services~~  
24 ~~Providers~~ may establish by rule, and charge and collect,  
25 reasonable inspection fees pursuant to the Alabama  
26 Administrative Procedure Act.

27           "§34-14C-5.

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

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

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

8           "(3) Health care practitioners legally eligible to  
9 order or prescribe home medical equipment, or who use home  
10 medical equipment to treat patients in locations other than  
11 the patient's residence, including, but not limited to,  
12 physicians, nurses, physical therapists, respiratory  
13 therapists, speech therapists, occupational therapists,  
14 optometrists, chiropractors, and podiatrists, except for those  
15 practitioners, other than a licensed physician practicing  
16 medicine, who provide home medical equipment services in a  
17 patient's residence.

18           Nothing in this chapter shall be construed as  
19 prohibiting or restricting a licensed physician who is  
20 practicing medicine, nor shall anything in this chapter be  
21 construed as requiring a physician practicing medicine, to be  
22 licensed as a home medical equipment services provider.

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

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

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

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

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

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

14           "§34-14C-6.

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

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

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

1 services. The complaint shall be in a form prescribed by the  
2 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 applicant or licensee on file with the board, or to the last  
8 known address of any unlicensed person or entity providing  
9 home medical equipment services. If the notice and opportunity  
10 for hearing is refused or the return receipt has not been  
11 received by the board within 10 days before the scheduled  
12 hearing, the applicant, licensee, or unlicensed person or  
13 entity may be served by mailing the charges and notice by  
14 first class mail, at least seven days before the hearing date,  
15 to the most recent address on file with the board, or to the  
16 last known address of the unlicensed person or entity  
17 providing home medical equipment services.

18 "(e) The board may invoke disciplinary action as  
19 outlined in subsection (f) whenever it is established to the  
20 satisfaction of the board, after a hearing held in accordance  
21 with this chapter and the Alabama Administrative Procedure  
22 Act, that any person is guilty of any of the following acts:

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

25 "(2) Making a material misrepresentation in  
26 furnishing information to the board.

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

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

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

11           "(6) Aiding, assisting, or willingly permitting  
12 another person to violate any provision of this chapter or  
13 rule of the board.

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

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

18           "(9) Engaging in dishonorable, unethical, or  
19 unprofessional conduct of a character likely to deceive,  
20 defraud, or harm the public.

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

25           "(11) Directly or indirectly giving to or receiving  
26 from any person, partnership, corporation, or other legal

1 entity any fee, commission, rebate, or other form of  
2 compensation for services not actually or personally rendered.

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

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

10 "(14) The use of any words, abbreviations, figures,  
11 or letters with the intention of indicating practice as a home  
12 medical equipment services provider without having first  
13 obtained a license from the board.

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

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

19 "(17) Failure to display a license in accordance  
20 with this chapter.

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

24 "(f) When the board finds any person guilty of any  
25 of the grounds set forth in subsection (e), the board may  
26 enter an order imposing one or more of the following  
27 penalties:



1           "(1) A letter of reprimand.

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

5           "(3) Denial of an application for an initial or  
6 renewal license.

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

10          "(5) Revocation of a license.

11          "(6) Payment of restitution to each consumer  
12 negatively affected by the prohibited act. Proof of such  
13 restitution shall be a signed and notarized release executed  
14 by the consumer or the estate of the consumer.

15          "(7) Assessment of the costs of the disciplinary  
16 proceedings.

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

21          "(h) The board may informally resolve any alleged  
22 violation of this chapter or rule of the board by stipulation,  
23 agreed settlement, or consent order, in lieu of an  
24 administrative hearing.

25          ~~"(a) An~~ (i) Any entity or person found to be  
26 providing home medical equipment services without a license as  
27 required by this chapter shall be subject to an administrative

1 fine of up to one thousand dollars (\$1,000) per day that  
2 services were provided without a license. Funds collected  
3 pursuant to this chapter shall be allocated to the  
4 administration of the program.

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

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

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

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

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

24 "(o) In addition to any other penalty or  
25 disciplinary action authorized by this chapter, the board may  
26 seek an injunction against any person or entity found in  
27 violation of this chapter. In an action for an injunction, the

1 board may demand and recover a civil penalty of fifty dollars  
2 (\$50) per day for each violation, reasonable attorney fees,  
3 and court costs. No civil penalty shall be awarded to the  
4 board if an administrative fine is assessed pursuant to  
5 subsection (i).

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

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

14 "§34-14C-7.

15 "There is hereby established a separate special  
16 revenue trust fund in the State Treasury to be known as the  
17 Home Medical Equipment ~~Services~~ Fund. All receipts collected  
18 by the board under the provisions of this chapter are to be  
19 deposited into this fund and shall be used only to carry out  
20 the provisions of this chapter. The receipts shall be  
21 disbursed only by warrant of the state Comptroller upon the  
22 State Treasury, upon itemized vouchers approved by the  
23 executive director. No funds shall be withdrawn or expended  
24 except as budgeted and allotted according to Sections 41-4-80  
25 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and  
26 only in amounts as stipulated in the general appropriations  
27 bill or other appropriations bills.

1                   "§34-14C-8.

2                   "~~The home medical equipment services providers board~~  
3 shall be subject to the Alabama Sunset Law, ~~Title 41, Chapter~~  
4 ~~20,~~ as an enumerated agency as provided in Section 41-20-3,  
5 and shall have a termination date of October 1, 2002, and  
6 every four years thereafter, unless continued pursuant to the  
7 Alabama Sunset Law."

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

16                   Section 3. This act shall become effective on the  
17 first day of the third month following its passage and  
18 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..... . . . . . 14-JAN-14

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 22-JAN-14

Read for the third time and passed  
as amended..... . . . . . 06-FEB-14

Yeas 94, Nays 0, Abstains 0

Jeff Woodard  
Clerk