

1 SB104
2 156339-1
3 By Senator Bussman
4 RFD: Health
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

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

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 34-14C-1, 34-14C-2, 34-14C-3,
22 34-14C-4, 34-14C-4.1, 34-14C-5, 34-14C-6, 34-14C-7, and
23 34-14C-8 of the Code of Alabama 1975, are amended to read as
24 follows:

25 "§34-14C-1.

26 "As used in this chapter, the following terms shall
27 have the following meanings:

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

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

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

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

18 "§34-14C-2.

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

1 persons ~~representing~~ employed in the Home Medical Equipment
2 ~~Services Provider~~ home medical equipment industry shall be
3 selected from a list submitted by the Alabama Durable Medical
4 Equipment Association, or its successor. The consumer member
5 shall be selected from a list of names submitted by the
6 Governor's Office on Disability, or its successor. The
7 physician member shall be selected from a list of names
8 submitted by the Medical Association of Alabama, or its
9 successor. The acute-care hospital community member shall be
10 selected from a list submitted by the Alabama Hospital
11 Association, or its successor. The home health agency
12 community member shall be selected from a list of names
13 submitted by the Home Care Association of Alabama, or its
14 successor. All lists submitted for nominations shall include
15 at least two names for each appointed position to be filled.
16 Board members shall each be citizens of this state and shall
17 have no record of sanctions related to fraud under federal or
18 state law. The membership of the board shall be inclusive and
19 reflect the racial, gender, geographic, urban/rural, and
20 economic diversity of the state.

21 "(b) The initial members appointed to the board
22 shall serve for terms of three to five years, with one-third
23 of the board being replaced each year, beginning in year four.
24 ~~The terms may be renewed for successive three-year periods.~~
25 Thereafter, subsequent appointments shall be for a term of
26 four years. No member shall serve more than two consecutive
27 terms of office. An appointment shall end on October 1, four

1 years from the date of the last term, and each member shall
2 hold office until his or her successor is appointed by the
3 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 be filled by the~~
14 ~~Governor within 60 days. Whenever a vacancy occurs on the~~
15 ~~board due to the death or resignation of a currently appointed~~
16 ~~board member, or other like cause, the vacancy shall be filled~~
17 ~~by appointment by the Governor for the remainder of the~~
18 ~~unexpired term of the member, as provided under subsection~~
19 ~~(b).~~ If a vacancy occurs among those members who ~~represent~~ are
20 employed in the home medical equipment services provider
21 industry, the appointment shall be made from a list submitted
22 by the Alabama Durable Medical Equipment Association or its
23 successor.

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

1 "(1) Misfeasance.

2 "(2) Malfeasance.

3 "(3) Neglect of duty.

4 "(4) Conviction of a felony.

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

6 "(g) The board may employ an executive director, who
7 shall be in the unclassified service of the state, as defined
8 in the Merit System Act, and shall serve at the pleasure of
9 the board, and may employ attorneys, experts, inspectors,
10 investigators, and other employees as necessary to discharge
11 the duties of the board and administer this chapter. The board
12 shall determine the duties and fix the compensation of the
13 executive director and other employees, subject to the general
14 laws of the state.

15 "(h) The board shall adopt a seal, which shall be
16 affixed to all licenses issued by the board, and shall have
17 all other powers necessary and proper for performing official
18 duties.

19 "(i) The board may establish and charge reasonable
20 fees relating to the administration and enforcement of this
21 chapter including, but not limited to, application,
22 processing, copying, mailing, filing, and other fees as
23 necessary to offset costs.

24 "(j) Absent gross negligence, recklessness,
25 wantonness, or deliberate misconduct, members of the board are
26 immune from liability for all good faith acts performed in the
27 exercise of their duties as members of the board.

1 "§34-14C-3.

2 "~~(a) Through consultation with current members in~~
3 ~~good standing of the Alabama Durable Medical Equipment~~
4 ~~Association or its successor, the~~ The board shall adopt
5 regulations that specify the medical equipment to be included
6 in this chapter, set standards for the licensure of entities
7 which provide home medical equipment services, and govern the
8 safety and quality of home medical equipment service
9 providers.

10 "(b) All home medical equipment services providers
11 shall:

12 "(1) Comply with all applicable federal and state
13 laws and regulations governing the safety of home medical
14 equipment services provider facilities and delivery vehicles,
15 the safety and quality of home medical equipment, and the
16 safety, quality, and effectiveness of home medical equipment
17 service procedures.

18 "(2) Comply with any additional standards and
19 testing requirements, as duly promulgated by the board and
20 required for licensure.

21 "§34-14C-4.

22 "(a) Except as otherwise provided in this chapter, a
23 home medical equipment services provider shall be licensed
24 annually by the board before the provider may engage in the
25 provision of home medical equipment services. In Alabama, when
26 a single business entity provides home medical equipment
27 services from more than one location within the state, each

1 such location shall be ~~required to obtain a license on its own~~
2 ~~merit~~ licensed. Out-of-state home medical equipment services
3 providers are not required to maintain a physical location in
4 state; however, out-of-state applicants must provide a
5 physical location meeting requirements of Section 473-X-4-.01,
6 Subsection a-f, Alabama Administrative Code, or its
7 successors, and may be subject to inspection by the board.

8 "(b) A license applicant shall submit the
9 application for licensing or renewal to the board on a form
10 promulgated and required by the board. ~~In-state and~~
11 ~~out-of-state applicants~~ Applicants shall pay a reasonable
12 nonrefundable fee established by the board at the time the
13 application is submitted. The board shall have the authority
14 to set reasonable fees for ~~in-state and out-of-state~~
15 applicants to obtain a license. ~~The license~~ Upon satisfaction
16 of all applicable standards and requirements for licensure,
17 the board shall issue a license certificate permitting the
18 licensee to engage in providing home medical equipment
19 services ~~shall be effective upon written notification from the~~
20 ~~board that the applicant meets the standards and has complied~~
21 ~~with all requirements for licensing.~~ The certificate shall be
22 displayed prominently at each licensed location. No person,
23 partnership, corporation, or other legal entity that is not
24 otherwise exempted under this chapter shall provide home
25 medical equipment services without first obtaining a license
26 issued by the board.

1 "(c) Accreditation by the Joint Commission on
2 Accreditation of Healthcare Organizations, the Community
3 Health Accreditation Program, or other accrediting entities
4 shall not be substituted for compliance with this chapter.

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

16 "~~(e) Home medical equipment service providers~~
17 ~~License applicants~~ who, upon initial inspection, are found not
18 to comply with applicable licensing standards, ~~may be issued a~~
19 ~~provisional license valid for six months. The board shall~~
20 ~~advise the provider shall be notified by the board of the~~
21 ~~areas of noncompliance contemporaneous with the issuance of~~
22 ~~the provisional license, and shall reinspect the provider be~~
23 ~~reinspected~~ for compliance ~~between four and six months after~~
24 ~~the provisional license is issued upon application and payment~~
25 ~~of a reasonable reinspection fee established by the board of~~
26 ~~up to one three hundred fifty dollars~~ ~~(\$150)~~ (\$300).

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

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

9 "~~(h) Employees, contractors, or inspectors of the
10 board may conduct inspections of out-of-state facilities upon
11 application from out-of-state applicants for licensure and
12 renewal. Travel allowances, as allowed by the Alabama State
13 Ethics Commission, shall be provided by the out-of-state
14 applicant for all inspections conducted at the physical
15 out-of-state location.~~

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

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

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

7 "§34-14C-4.1.

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

12 "§34-14C-5.

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

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

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

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

1 practitioners who provide home medical equipment services in a
2 patient's residence.

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

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

7 "(6) Hospice programs, except programs which provide
8 home medical equipment services, including delivery to a
9 patient's residence.

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

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

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

20 "§34-14C-6.

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

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

1 "(c) The board may institute a hearing for denial,
2 suspension, or revocation of a license or any person may file
3 a written complaint with the board seeking the denial,
4 suspension, or revocation of an application for licensure or
5 license issued by the board or the investigation of any
6 unlicensed person or entity providing home medical equipment
7 services. The complaint shall be in a form prescribed by the
8 board.

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

24 "(e) The board may invoke disciplinary action as
25 outlined in subsection (f) whenever it is established to the
26 satisfaction of the board, after a hearing held in accordance

1 with this chapter and the Alabama Administrative Procedure
2 Act, that any person is guilty of any of the following acts:

3 "(1) Violation of this chapter or a rule of the
4 board.

5 "(2) Making a material misrepresentation in
6 furnishing information to the board.

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

9 "(4) Conviction of or entry of a plea of guilty or
10 nolo contendere to any crime that is a felony under the laws
11 of the United States, or any state or territory of the United
12 States, or to any crime that is a misdemeanor, if an essential
13 element of the crime is dishonesty or is directly related to
14 providing home medical equipment services.

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

17 "(6) Aiding, assisting, or willingly permitting
18 another person to violate any provision of this chapter or
19 rule of the board.

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

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

24 "(9) Engaging in dishonorable, unethical, or
25 unprofessional conduct of a character likely to deceive,
26 defraud, or harm the public.

1 "(10) Denial, revocation, suspension, or restriction
2 of a license in another state or jurisdiction to provide home
3 medical equipment services for a reason other than failure to
4 renew the license.

5 "(11) Directly or indirectly giving to or receiving
6 from any person, partnership, corporation, or other legal
7 entity any fee, commission, rebate, or other form of
8 compensation for services not actually or personally rendered.

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

11 "(13) Willfully making or filing false records,
12 reports, or billings in the course of providing home medical
13 equipment services including, but not limited to, false
14 records, reports, or billings filed with state or federal
15 agencies or departments.

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

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

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

25 "(17) Failure to display a license in accordance
26 with this chapter.

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

4 "(f) When the board finds any person guilty of any
5 of the grounds set forth in subsection (e), the board may
6 enter an order imposing one or more of the following
7 penalties:

8 "(1) A letter of reprimand.

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

12 "(3) Denial of an application for an initial or
13 renewal license.

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

17 "(5) Revocation of a license.

18 "(6) Payment of restitution to each consumer
19 negatively affected by the prohibited act. Proof of such
20 restitution shall be a signed and notarized release executed
21 by the consumer or the estate of the consumer.

22 "(7) Assessment of the costs of the disciplinary
23 proceedings.

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

1 "(h) The board may informally resolve any alleged
2 violation of this chapter or rule of the board by stipulation,
3 agreed settlement, or consent order, in lieu of an
4 administrative hearing.

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

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

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

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

25 "~~(c) An~~ (m) Any entity or person subject to the
26 penalties prescribed by subsections ~~(a) and (b)~~ shall be

1 ~~entitled to~~ (i) and (j) may pursue an appeal through the board
2 according to ~~regulations~~ rules promulgated by the board.

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

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

14 "(p) Upon the revocation or suspension of a license,
15 the licensee shall immediately surrender the license to the
16 board, and if the licensee fails to do so, the board may seize
17 the license.

18 "(q) Any person aggrieved by an adverse action of
19 the board may appeal the action to the Circuit Court of
20 Montgomery County in accordance with the Alabama
21 Administrative Procedure Act.

22 "§34-14C-7.

23 "There is hereby established a separate special
24 revenue trust fund in the State Treasury to be known as the
25 Home Medical Equipment ~~Services~~ Fund. All receipts collected
26 by the board under the provisions of this chapter are to be
27 deposited into this fund and shall be used only to carry out

1 the provisions of this chapter. The receipts shall be
2 disbursed only by warrant of the state Comptroller upon the
3 State Treasury, upon itemized vouchers approved by the
4 executive director. No funds shall be withdrawn or expended
5 except as budgeted and allotted according to Sections 41-4-80
6 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and
7 only in amounts as stipulated in the general appropriations
8 bill or other appropriations bills.

9 "§34-14C-8.

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

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

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