

Chapter 14C. Home Medical Equipment.

§ 34-14C-1. Definitions.

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

- (1) BOARD. The Board of Home Medical Equipment as established by this chapter.
- (2) HOME MEDICAL EQUIPMENT. Medical devices usable in a residential setting, as defined in regulations established by the board.
- (3) HOME MEDICAL EQUIPMENT SERVICES. The advertisement, sale, rental, delivery, installation, maintenance, replacement of, or instruction in the use of medical equipment and related supplies used by a sick or disabled individual to allow that individual to obtain care or treatment and be maintained in a residential setting.
- (4) HOME MEDICAL EQUIPMENT SERVICES PROVIDER. A corporation, other business entity, or person engaged in the business of providing home medical equipment services, either directly or through a contractual arrangement, to an unrelated sick or disabled individual in the residence of that individual.

§ 34-14C-2. Board of Home Medical Equipment.

(a) The Governor shall appoint a minimum of nine persons to serve on the Board of Home Medical Equipment, such persons to include a majority who are employed in the home medical equipment industry, and at least one person from each of the following categories: A consumer of home medical equipment services, a physician, a representative from the acute-care hospital community, and a representative from the home health agency community. Those persons employed in the home medical equipment industry shall be selected from a list submitted by the Alabama Durable Medical Equipment Association, or its successor. The consumer member shall be selected from a list of names submitted by the Governor's Office on Disability, or its successor. The physician member shall be selected from a list of names submitted by the Medical Association of Alabama, or its successor. The acute-care hospital community member shall be selected from a list submitted by the Alabama Hospital Association, or its successor. The home health agency community member shall be selected from a list of names submitted by the Home Care Association of Alabama, or its successor. All lists submitted for nominations shall include at least two names for each appointed position to be filled. Board members shall each be citizens of this state and shall have no record of sanctions related to fraud under federal or state law. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(b) The initial members appointed to the board shall serve for terms of three to five years, with one-third of the board being replaced each year, beginning in year four. Thereafter, subsequent appointments shall be for a term of four years. No member shall serve more than two consecutive terms of office. An appointment shall end on October 1, four years from the date of the last term, and each member shall hold office until his or her successor is appointed by the Governor.

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

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

(e) Whenever a vacancy occurs on the board due to the death or resignation of a currently appointed board member, or other like cause, the vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term of the member, as provided under subsection (b). If a vacancy occurs among those members who are employed in the home medical equipment industry, the appointment shall be made from a list submitted by the Alabama Durable Medical Equipment Association or its successor.

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

(1) Misfeasance.

(2) Malfeasance.

(3) Neglect of duty.

(4) Conviction of a felony.

(5) Permanent inability to perform official duties.

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

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

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

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

§ 34-14C-3. Duties of board; requirements of providers.

(a) The board shall adopt regulations that specify the medical equipment to be included in this chapter, set standards for the licensure of entities which provide home medical equipment services, and govern the safety and quality of home medical equipment service providers.

(b) All home medical equipment services providers shall:

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

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

§ 34-14C-4. Licensure; inspections.

(a) Except as otherwise provided in this chapter, a home medical equipment services provider shall be licensed annually by the board before the provider may engage in the provision of home medical equipment services. In Alabama, when a single business entity provides home medical equipment services from more than one location within the state, each such location shall be licensed. A provider of home medical equipment services that has a principal place of business outside this state shall maintain at least one physical location within this state, each of which shall be licensed.

(b) A license applicant shall submit the application for licensing or renewal to the board on a form promulgated and required by the board. Applicants shall pay a reasonable nonrefundable fee established by the board at the time the application is submitted. The board shall have the authority to set reasonable fees for applicants to obtain a license. Upon satisfaction of all applicable standards and requirements for licensure, the board shall issue a license certificate permitting the licensee to engage in providing home medical equipment services. The certificate shall be displayed prominently at each licensed location. No person, partnership, corporation, or other legal entity that is not otherwise exempted under this chapter

shall provide home medical equipment services without first obtaining a license issued by the board.

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

(d) Commencing on June 1, 2014, licenses issued pursuant to this chapter shall expire on August 31 of the year following issuance. A license may be renewed within the 60-day period after August 31 upon payment of both the required fee and a late fee as established by rule of the board. Any license that is not renewed before the end of the 60-day grace period shall lapse. A lapsed license may not be renewed unless the holder reapplies and satisfies then current requirements for initial licensure.

(e) License applicants who, upon initial inspection, are found not to comply with applicable licensing standards, shall be notified by the board of the areas of noncompliance and shall be reinspected for compliance upon application and payment of a reasonable reinspection fee established by the board of up to three hundred dollars (\$300).

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

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

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

(i) The board shall adopt and maintain standards for the individuals charged with conducting the inspections for the purpose of determining compliance with the requirements of this chapter. Board employees or contractors may conduct inspections.

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

§ 34-14C-4.1. Inspection fees.

The Board of Home Medical Equipment may establish by rule, and charge and collect, reasonable inspection fees pursuant to the Alabama Administrative Procedure Act.

§ 34-14C-5. Exemptions.

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

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

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

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

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

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

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

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

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

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

(9) Mail order companies, as defined by rule of the board.

§ 34-14C-6. Denial, suspension, or revocation of license; hearing; notice; penalties; appeal.

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

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

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

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

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

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

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

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

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

- (5) Gross negligence or gross misconduct in providing home medical equipment services.
- (6) Aiding, assisting, or willingly permitting another person to violate any provision of this chapter or rule of the board.
- (7) Failing, within 30 days, to provide information in response to a written request of the board.
- (8) Failing to cooperate with an inspection or with an investigation conducted by the board.
- (9) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
- (10) Denial, revocation, suspension, or restriction of a license in another state or jurisdiction to provide home medical equipment services for a reason other than failure to renew the license.
- (11) Directly or indirectly giving to or receiving from any person, partnership, corporation, or other legal entity any fee, commission, rebate, or other form of compensation for services not actually or personally rendered.
- (12) A finding that a licensee on probationary status has violated the terms of the probation.
- (13) Willfully making or filing false records, reports, or billings in the course of providing home medical equipment services including, but not limited to, false records, re-ports, or billings filed with state or federal agencies or departments.
- (14) The use of any words, abbreviations, figures, or letters with the intention of indicating practice as a home medical equipment services provider without having first obtained a license from the board.
- (15) Failure to comply with state or federal laws and regulations concerning home medical equipment services providers.
- (16) Solicitation of home medical equipment services using false or misleading advertising.
- (17) Failure to display a license in accordance with this chapter.
- (18) Failure to report a change of name, address, control, ownership, or administration to the board within 30 days after the date of change.

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

(1) A letter of reprimand.

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

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

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

(5) Revocation of a license.

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

(7) Assessment of the costs of the disciplinary proceedings.

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

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

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

(j) Any entity or person found to be providing home medical equipment services without a license as required by this chapter may be administratively enjoined by the board from providing services until such time as the entity or person complies with this chapter.

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

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

(m) Any entity or person subject to the penalties prescribed by subsections (i) and (j) may pursue an appeal through the board according to rules promulgated by the board.

(n) Any hearings related to matters before the board shall be conducted in Montgomery County.

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

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

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

§ 34-14C-7. Home Medical Equipment Fund.

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

§ 34-14C-8. Sunset provision.

The board shall be subject to the Alabama Sunset Law as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2002, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.