

Board Meeting Minutes September 16, 2014

The Alabama Board of Home Medical Equipment met on Tuesday, September 16, 2014, at the Board office in Montgomery, Alabama for the purpose of conducting Board business. Those in attendance were as follows: Peter Czapla, Chair; Melissa Mann, Member; Kent Crenshaw, Member; Lisa Wells, Member; Vernon Johnson, Member; Bruce Ovitt, Member; and Missy Fields, Member. Not present were Dr. Fred Hunker, Member; Rhonda Tidwell, Member; John Beard, Member; and Wayne Lewis, Vice Chairman. Staff present were Paula McCaleb, Executive Director; Dana Billingsley, Legal Counsel; and Brandy Isenhour, Operations Manager (serving as Recording Secretary).

The meeting was called to order at approximately 10:04 a.m., with a quorum present, in the following members: Peter Czapla, Vernon Johnson, Kent Crenshaw, Bruce Ovitt, Melissa Mann, Missy Fields, and Lisa Wells.

The meeting was advertised on the Board's web site, as well as the Secretary of State's web site, in accordance with the Alabama Open Meetings Act.

A motion was made by Missy Fields to accept the meeting Minutes from August 26, 2014, as distributed. Lisa Wells seconded the motion. The Chair called for a vote from the Board. Voting "aye" were Vernon Johnson, Kent Crenshaw, Melissa Mann, Lisa Wells, Bruce Ovitt, and Missy Fields. Voting "nay" were none. The motion passed.

During discussion regarding Interpretation of the Law, Paula McCaleb, Executive Director, went on record presenting the Board's longstanding policy of licensing by each location; the history of the 2014 Legislative Session regarding the new law; and the Board's last Sunset Review pertaining to discussion on this matter. Ms. McCaleb went on to further propose a solution to the Board to be consistent with previous interpretations of the law and if further clarification is needed to revisit that in the 2015 Legislative Session.

A ten (10) minute break was taken at 11:27 a.m. The Board re-convened at 11:45 a.m., with a quorum present, in the following members: Peter Czapla, Vernon Johnson, Bruce Ovitt, Kent Crenshaw, Melissa Mann, Missy Fields, and Lisa Wells.

A motion was made by Lisa Wells to accept option 1 of the proposed Rules and Regulations Chapter 473-X-3-.02 with changes. Bruce Ovitt seconded the motion. The Chair called for a vote from the Board. Voting "aye" were Bruce Ovitt, Lisa Wells, and Melissa Mann; Voting "nay" was Vernon Johnson; and those abstaining were Kent Crenshaw and Missy Fields. The motion passed.

473-X-3-.02 In-State Location Requirements.

- (1) On March 11, 2014, Governor Bentley signed Alabama Act 2014-172 (the "Act") into law, which amended ALA. CODE § 34-14C-4(a) (1975 as amended) to require each provider of home medical equipment services with a principal place of business outside the state of Alabama, not otherwise exempted from licensure pursuant to ALA. CODE § 34-14C-5, to maintain at least one physical location within the state, each of which must be licensed by the Board of Home Medical Equipment. By its terms, the Act became effective on June 1, 2014. Previous to the passage of the Act, out of state home medical equipment services providers were not required to maintain a physical location within the state, but

were only required to provide a physical location meeting the requirements of Rule 473-X-4-.01, and be subject to inspection by the Board.

- (2) A provider of home medical equipment that has a principal place of business outside this state and has established a licensed, instate location may provide home medical equipment and services to its Alabama customers through any corporate branch or location, including an out of state location that is not otherwise eligible for an exemption from licensure pursuant to ALA. CODE § 34-14C-5, as permitted under the CMS DMEPOS Supplier Standards and applicable regulations. For purposes of this rule, a corporate branch or location does not include a corporate subsidiary or affiliate that would itself require a license from this Board; the branch or location should be a provider of home medical equipment services that is duly licensed in accordance with applicable law in the state in which it is located. The ownership of the provider's licensed instate location, as defined in Rule 473-X-3-.01(7)(h), will be responsible to the Board for any equipment or services provided to the customer by any other corporate branch or location.

A motion was made by Missy Fields to accept the proposed Rules and Regulations Chapter 473-X-3-.01 with changes. Bruce Ovitt seconded the motion. The Chair called for a vote from the Board. Voting "aye" were Kent Crenshaw, Bruce Ovitt, Melissa Mann, Missy Fields, and Lisa Wells; Vernon Johnson abstained. The motion passed.

473-X-3-.01. Administrative Procedure.

- (1) Any person may be heard by the Board in person or through an attorney, as long as they file a written request with the Board office. The Board will schedule the appearance at the next regularly scheduled meeting, provided the request is received at least fourteen (14) days prior to such meeting; otherwise, the appearance will be scheduled for the second meeting following receipt of the request.
- (2) Board meetings shall be conducted following a written agenda, which is provided to each member at least ten (10) days prior to each meeting. The Alabama Open Meetings Act and/or Robert's Rules of Order, short form, shall be used as the parliamentary authority for all meetings of the Board.
- (3) Upon receipt of an application and the appropriate fees therefor, the fees shall be deposited into the Home Medical Equipment Fund in the State Treasury, pursuant to Code of Ala. 1975, Section 34-14C-7.
- (4) If the application is complete and sufficiently meets the standards set by the Board, the Board office shall schedule an inspection, as required.
- (5) If the application is not complete, the Board office shall notify the applicant, in writing, of all deficiencies in the application. If the applicant does not return a properly completed application within ninety (90) days of the notification of deficiency, or, if a completed application cannot be submitted within ninety (90) days, the fee is forfeited and the applicant may reapply.
- (6) No one may operate as a Home Medical Equipment Services Provider without a valid license, including during the time a license application is pending.

(7) The licensure application, the form of which is indexed in the appendix to this section, shall include at a minimum, the following information:

a. (a) Name, physical location, mailing address, and telephone number of the business, including all trade or business names.

a. 1. Name, physical location, mailing address, telephone number and Person in Charge for any other corporate branch or location that may provide home medical equipment and/or services to Alabama customers pursuant to Rule 473-X-3-.02.

(b) The name of the manager or person in charge of the day-to-day business operations at the physical location.

(c) The names and home addresses of officers or other persons in positions of control.

(d) The hours and days of operation of the business.

(e) A list of categories of equipment and services provided to the public.

(f) Certification of insurance.

(g) The Federal Employee identification number assigned to the business. For a sole proprietor, this may be the social security number of the owner.

(h) Disclosure of ownership, which includes: the name of a person, if a person; the full name of a sole proprietor and the name of the business entity, if a sole proprietorship; the name of each partner and the name of the partnership, if a partnership; the name and title of each corporate officer and director, a list of shareholders, the corporate name and the state of incorporation and the name of any parent company, if a corporation; or the full name and title of each member and each manager of a limited liability company, the name of the state where organized and the name of the parent company.

(i) Proof of United States citizenship or of legal presence in the United States, as required by Section 31-13-7, Code of Ala., 1975.

(j) Certification, signed by a person with the authority to bind the applicant and notarized under oath, indicating that the applicant complies with the rules and regulations of the Board, and has truthfully and completely disclosed all ownership and control of the applicant, and that all information submitted on or with the application is true and complete. The certification shall include an acknowledgement that the ownership of the licensed instate location, as defined in subparagraph (h) above, shall be responsible to the Board for any home medical equipment and/or services provided to an Alabama customer by any corporate branch or location other than the licensed instate location, as provided under Rule 473-X-3-.02(2).

(k) No question should be left blank. If an item does not apply, then the applicant should mark the question in a fashion adequate to allow the Board to determine that the applicant did not overlook it.

(8) Any change in the name, address, control, ownership, manager or person in charge of a licensee shall be reported to the Board office within thirty (30) days of such change. The change should be reported on the applicable form(s) indexed in the appendices to these rules.

(a) A change only in the physical address of a licensee requires submission of the Application for a Change of Address and the required fee within thirty (30) days of such change, and a site inspection of the new facility.

a. (b) A change only in the Person in Charge of a licensee requires submission of the Application for Change of Person in Charge within thirty (30) days of such change.

(c) A change in the ownership or control of a licensee requires notification of the change in ownership within (30) days of such change.

1. The purchase of only the assets of a business (an asset purchase) requires the buyer to operate the business under a new tax identification number (TIN). A change in the TIN requires the new owner to obtain a new Medicare supplier number and submit a new application for licensure to the Board. The new owner must successfully complete the reapplication process before a new license can be issued.

2. The purchase of all the assets and liabilities of a business (a stock purchase) permits the buyer to retain and operate the business under the existing TIN. The new owner must submit a letter notifying the Board of the change in ownership or control within thirty (30) days of such change.

(d) If more than one change occurs simultaneously in the information reflected on the licensee's application, including but not limited to, the physical address, equipment provided, FEIN or SSN, or if disciplinary actions against the licensee have ensued before this Board or in any other licensing state or jurisdiction, the licensee must complete and submit a new application for licensure reflecting all such changes within thirty (30) days of such change and successfully complete the reapplication process before a new license can be issued.

(9) All licenses expire on August 31st of each year. If not renewed within sixty (60) days of the expiration date, the license is considered lapsed, and a new application and inspection will be required. The Board may notify third party payors, related regulatory boards and agencies, and governmental agencies responsible for reimbursement to home medical equipment services providers, such as Medicaid and Medicare, of lapsed licenses no earlier than November 1st of each licensing year.

(10) Certain entities are exempt from licensure pursuant to Section 34-14C-5, Code of Ala. 1975.

A motion was made by Missy Fields to accept the proposed Rules and Regulations Chapter 473-X-8-.01 with changes. Bruce Ovitt seconded the motion. The Chair called for a vote from the Board. Voting "aye" were Vernon Johnson, Kent Crenshaw, Bruce Ovitt, Melissa Mann, Missy Fields, and Lisa Wells. Voting "nay" were none. The motion passed.

473-X-8-.01. Renewal of License.

(1) The Home Medical Equipment license shall be valid for one (1) year, expiring on August 31st of each year; however, the initial licensure period for any given license may be prorated so that its expiration date coincides with the August 31st renewal date for all valid licenses. The license fee will not be prorated for abbreviated licenses issued. A license may still be renewed within the sixty (60) day period following the expiration date of August 31st upon payment of both the required renewal fee of two hundred and fifty dollars (\$250) and a late fee of one hundred and fifty dollars (\$150).

(2) Failure to renew within sixty (60) days after the expiration date of the current licensure will result in a lapsed license. Home Medical Equipment Services Providers will not be permitted to provide home medical equipment services with a lapsed license. Licensees who operate under lapsed licenses shall be subject to the penalties established under Section 34-14-C-6, Code of Ala., 1975.

(3) One (1) renewal notice will be provided by U.S. Mail to the licensee's last address of record sixty (60) days prior to the renewal date. Licensees are responsible to maintain a current mailing address with the Board. One final renewal notice will be placed by an automated calling service on August 21st to licensees who have not renewed by this date.

(4) To be eligible for renewal, an applicant shall:

(a) Hold a valid, active Alabama license; and

(b) Timely submit a completed and signed renewal application and required fee(s) to the Board. The renewal application shall include an acknowledgement that the ownership of the licensed instate location being renewed, as defined in Rule 473-X-3-.01(7)(h), shall be responsible to the Board for any home medical equipment and/or services provided to an Alabama customer by any corporate branch or location other than the licensed instate location, as provided under Rule 473-X-3-.02(2).

(5) Renewals will be submitted online via the Board's web site. Licensees may request manual renewal by making a written request to the Board office.

(6) Failure to receive the renewal application or notice of renewal shall not relieve the licensee of the responsibility to renew the license by the expiration date.

(7) Once a license has lapsed, a cease and desist letter will be issued by certified mail to the last address of record and a new application and inspection will be required for licensure.

(8) The Board may notify third party payors, regulatory boards and agencies, and governmental agencies responsible for reimbursement to home medical equipment services providers, such as Medicaid and Medicare, of lapsed licenses no earlier than November 1st of each licensing year.

A motion was made by Bruce Ovitt to accept the proposed Rules and Regulations Appendix I, Fees with changes. Missy Fields seconded the motion. The Chair called for a vote from the Board. Voting "aye" were Vernon Johnson, Kent Crenshaw, Brice Ovitt, Melissa Mann, Missy Fields, and Lisa Wells. Voting "nay" were none. The motion passed.

Appendix I. Fees

\$250 License/Renewal Fee (per location)

\$500 Initial Inspection Fee (per location)

\$250 Re-Inspection Fee

\$275 Site Inspection Fee upon Change of Physical Location

\$150 Late Renewal Fee

\$1,000 Processing Fee per Out of State Corporate Branch or Location Providing Services on Behalf of the Licensed Location

A motion was made by Missy Fields to decline the request presented to the Board for a variance because the same standards apply to all applicants and licensees. The motion was seconded by Vernon Johnson. The Chair called for a vote from the Board. Voting "aye" were Vernon Johnson, Kent Crenshaw, Melissa Mann, Missy Fields, Bruce Ovitt, and Lisa Wells. Voting "nay" were none. The motion passed.

The Chair announced that the next scheduled Board meeting would be held on November 18, 2014, at the Board office in Montgomery, Alabama.

There being no further Board business, Bruce Ovitt made a motion to adjourn the meeting. The motion was seconded by Missy Fields. The motion passed unanimously and the meeting adjourned at 12:29 p.m.

Respectfully Submitted,

Peter Czapla, *Chair*

Paula McCaleb, *Executive Director*

Wayne Lewis, *Vice Chair*

Brandy L. Isenhour, *Operations Manager*
(Serving as Recording Secretary)