

ALABAMA BOARD OF HOME MEDICAL EQUIPMENT SERVICES PROVIDERS

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www.homemed.state.al.us

IMPORTANT LICENSURE NOTICE - 2ND NOTICE

New Licensure Requirement

TO: Out of State Home Medical Equipment Licensees

FROM: Paula McCaleb, Executive Director 

Date: July 11, 2014

RE: Act 2014-172 – Compliance Process

As an out of state licensee, your Alabama Home Medical Equipment License will expire on August 31, 2014, and is not eligible for renewal without establishing a physical location within Alabama that meets the Board's licensure requirements. Below is the specific statute pertaining to this new requirement:

"Section 34-14C-4 (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 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."**

Out of State Providers will not have to reapply for licensure or pay the \$500 Site Inspection Fee for a new license if the following is submitted to the Board office before August 31, 2014:

- Establish an in state location that meets the Medicare DMEPOS Supplier Standards
- Submit an Application for Change of Address including \$275 Site Inspection Fee
- Pass a Site Inspection

Note: For a new location, many providers will also need to submit an Application for Change of Person in Charge for that location. There is no fee for this change and a new application will not have to be submitted.

For your convenience, please find attached the following items:

- Application for Change of Address
- Application for Change of Person in Charge
- Medicare DMEPOS Supplier Standards and Site Inspection Form

Out of state licensees who do not meet the new licensure requirement will be unable to provide continued services to Alabama patients after August 31, 2014. Further, out of state licensees who do not comply with the new requirement are responsible for notifying and referring patients to ensure no interruption of home medical equipment services. It is the out of state licensees duty to follow the Program Integrity Manual from CMS and/or the NSC's referral process/referral template in transitioning patients.

If you have any questions related to the new licensure requirements, the submission of your application(s) to the Board, or referral of patients, please contact the Board office at 334-215-3474. Thank you.

Alabama Board of Home Medical Equipment

P. O. Box 240636, Montgomery, AL 36124

Phone: 334-215-3474 FAX: 334.215.3457

Web Site: www.homemed.alabama.gov

APPLICATION FOR CHANGE OF ADDRESS

Instructions:

- This form is to be completed for existing licensees who are requesting a change of address only.
- If additional changes such as equipment provided, FEIN or SSN, or disciplinary actions have ensued,



here. You will need to complete a new application instead.

- Once this completed form is received in the Board Office, you will be contacted by an Inspector for the Board to schedule your site inspection. The site inspection form and 21 Supplier Standards are published at www.homemed.alabama.gov for your convenience.

Current License Number: _____

Applicant Information

(Instructions: Please list below the new address and information)

Legal Business Name: _____

(D.B.A., Trade, or Business Name)

Street Address: _____

City, State, Zip Code: _____

Phone: (____) _____ FAX: (____) _____

E-mail Address: _____

Preferred Mailing Address (for mailing purposes only):

City, State, Zip Code: _____

FEIN# or SS#: _____ Date Business Started: __/__/__

☐ Yes ☐ No Are patient records stored at this location?

If "No", where are they kept?

Instructions: All business licenses and occupational licenses are required to reflect the new physical address. List all business and occupational licenses you hold below (i.e. city, county or state business license, pharmacy license if supplying oxygen, Elevator Permit if supplying stair lifts, Orthotics and Prosthetics License (if supplying custom made O & P):

State/County/City	Type License	Date License Expires	Is the new address reflected on this license?
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

If additional space is needed, record on a separate sheet of paper and attach to this application.

General Liability Insurance

Instructions: General Liability Insurance Policy must reflect the new physical address.

Insurance Company Name: _____

Policy Number: _____ Date Issued: _____

Expiration Date: _____ Agent Name: _____

Agent Phone #: _____ Agent FAX: _____

- ☐ I have attached a copy of all business and occupational licenses reflecting new address;
- ☐ I have attached a copy of certificate of coverage for general liability insurance (minimum of \$300,000) reflecting new address;
- ☐ I have attached \$275 for the Site Inspection Fee upon Change of Physical location.
- ☐ Location is ready for site inspection now
OR
Location will be ready for site inspection after ____/____/____.
(licensees are to file a change of address notice 30 days prior or 30 days after move.)

Affidavit of Applicant

I, _____ acknowledge and state that all of the information supplied in this application is true and correct to the best of my knowledge, and that I have read and are familiar with the Rules and Regulations pertaining to the licensure of Home Medical Equipment in the State of Alabama. I acknowledge that any false or untrue statements or representation made in this application may result in the revocation or denial of any license to provide home medical equipment granted to me and/or criminal prosecution to the fullest extent of the law.

Person in Charge Signature

Date

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473-X-1-.01. Definitions.

(1) Applicant means an individual applicant in the case of a sole proprietorship, or any officer, director, agent, managing employee, general manager, or person in charge, or any partner or shareholder having an ownership interest in the corporation, partnership, or other business entity.

(2) Board means the Board of Home Medical Equipment, as established by the Code of Ala. 1975, Sections 34-14C-1, et seq.

(3) Consumer or Patient means any person who uses home medical equipment in his or her place of residence.

(4) Home Medical Equipment (HME) means medical devices usable in a residential setting. Home Medical Equipment is any equipment that provides therapeutic benefits or enables the consumer to perform certain tasks that he or she is unable to undertake otherwise due to certain medical conditions and/or illnesses. Home Medical Equipment is considered to be equipment that can withstand repeated use and is primarily and

customarily used to serve a medical purpose. Home Medical Equipment includes, but is not limited to:

(a) equipment such as wheelchairs and power-operated vehicles ("scooters"), wheelchair cushions and seating systems, hospital beds, traction equipment, canes, crutches, walkers; respiratory care equipment, including positive air pressure devices, invasive and non invasive ventilators, apnea monitors, aerosol compressors, nebulizers, oxygen therapy equipment, and other such devices; and other medically needed products or supplies.

(b) any product intended for use in the home and defined as a medical device by the U. S. Food and Drug Administration under the federal Food, Drug and Cosmetic Act, Chapter 11, Sec. 201. [312](b) and Chapter V, Subchapters (A) and (B).

(c) any product, intended for use in the home, which is a device, instrument, apparatus, machine, or other similar article whose label bears the statement: "Caution: Federal law requires dispensing by or on the order of a physician."

(d) any product eligible to be reimbursed under the Healthcare Common Procedure Coding System (HCPCS) code listing by any insurance provider, to include, but not limited to, Medicare Program Part B Durable Medical Equipment benefits or Alabama Medicaid Program Durable Medical Equipment benefits.

(e) Home Medical Equipment does not include prosthetics, splints, braces or aids custom fabricated by a licensed health care provider.

(f) Home Medical Equipment does not include vehicle platform lifts or residential platform lifts and stairways chair lifts.

(5) Home Medical Equipment Services means the advertisement, in any form or through any medium, 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 obtain care or treatment and be maintained in a residential setting.

(6) Home Medical Equipment Services Provider means a corporation, other business entity, or person engaged in the business of providing home medical equipment, either directly or through a contractual arrangement, to an unrelated sick or disabled individual in the residence of that individual.

(7) Licensee means the person or entity to which a license is issued by the Board.

(8) Mail order company means a company which lists its products for consumers to buy, rent or lease via telephone, mailed check with order form, or Internet order and delivers such products directly to the consumer via a postal service, such as the U.S. Postal Service (USPS), UPS, FedEx or another courier service; provided, however, that a company that supplies respiratory care and oxygen equipment, as defined under Rule 473-X-1-.01(4)(a), to Alabama consumers in this manner, or any other home medical equipment necessary to avert an immediate threat to a consumer's health or safety, without which a consumer might be required to seek emergency medical treatment, shall not be considered to be a mail order company for purposes of this rule. Mail order companies do not have a licensed physical location in the state and must comply with the regulations of the Federal Trade Commission (FTC), 16 C.F.R. §§ 435.1 to 435.3, and the USPS. Home Medical Equipment Services Providers whose employees, agents or subcontractors enter the consumer's residence to service home medical equipment supplied by a mail order company or to instruct consumers in the use of such equipment shall not be considered mail order companies.

(9) Person in Charge means any individual, partnership, corporation, association, governmental subdivision or public or private organization that directly or indirectly manages, controls, or oversees the operation of a corporation or other business entity that is a licensee, regardless if that person is a partner, shareholder, owner, officer, director, agent, or employee of the entity.

(10) Change in Ownership or Change in Control means the purchase of either the assets or stock of a Home Medical Equipment Services Provider's Business.

(a) an asset purchase is the purchase of the assets of a business only. The buyer will be operating the business under a new tax identification number (TIN).

(b) a stock purchase is the purchase of all the assets and liabilities of a business, where the buyer will retain and operate the business under its existing TIN.

(11) Warehouse means a support facility to a licensed location that houses a licensee's surplus inventory of home medical equipment. A warehouse is not open to the public, may not sell or distribute home medical equipment directly to the consumer and may not be advertised as a licensed location. A warehouse does not meet the supplier standards set forth in 473-X-4-.01 and may not be licensed as a separate location.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

473-X-2-.01. Employees; Oath; Meeting; Powers.

- (1) The Board may employ an executive director, attorney, experts, and other personnel as it may from time to time find necessary, for the proper performance of its duties, and for whom necessary funds are appropriated.
- (2) Before entering public duties of the office, the members of the Board shall take the constitutional oath of office.
- (3) The Board shall elect, at the first meeting following October 1st each year, a Chair and a Vice Chair. The Board shall hold at least two meetings each year. Additional meetings may be held at the discretion of the Chair or upon the written request of any three members of the Board. A majority of the currently appointed members of the Board shall constitute a quorum.
- (4) The Board shall inspect and pass on the qualifications of applicants and shall issue a license to each successful applicant.
- (5) The Board may authorize expenditures as necessary to carry out its duties from the fees that it collects, pursuant to a budget developed and approved by the Board. In no event shall the expenditures exceed the revenues of the Board during any fiscal year.
- (6) The Board may reimburse Board members for attorney fees incurred if individual members of the Board are personally sued under the Open Meetings Act. 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.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

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 can not 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) Name, physical location, mailing address, and telephone number of the business, including all trade or business names.
- (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.
- (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 over look 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.

(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 owners 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.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

473-X-4-.01. Inspection Standards.

(1) The Board hereby incorporates the Centers for Medicare and Medicaid Services (CMS) Medicare Durable Medical Equipment Provider of Service (DMEPOS) Supplier Standards as additional requirements with which all applicants must comply for licensure; provided, however, the Board does not incorporate the requirement for accreditation as an additional requirements with which applicants for licensure must comply.

(2) A Home Medical Equipment Services Provider shall maintain a physical facility on an appropriate site. The facility must contain space for storing business records, including the supplier's delivery, maintenance, and patient records. For purposes of this rule, a residence, post office box or commercial mailbox is not considered a physical facility.

(3) A Home Medical Equipment Services Provider must maintain a primary business telephone at the physical facility. This telephone number must be listed under the name of the business and in the business section of the local telephone company directory. The exclusive use of a pager number, call forwarding, answering service, cell phone, or answering machine may not be used as the primary business telephone.

(4) The physical facility must be staffed during normal business hours, and must have a visible sign with the name of the business, business hours, and the phone number required by paragraph (3).

(5) Medical equipment shall be maintained in a clean and sanitary condition and stored in a dry, well-ventilated area. Routine maintenance, preventative maintenance, and repairs shall be performed according to manufacturer's guidelines. The home medical equipment services provider shall provide consumer instruction regarding the use of home medical equipment requiring services. Delivery services include transportation of equipment to and from consumer, equipment setup, and record keeping.

(6) Records shall be maintained to the same extent as required by federal regulations, including, but not limited to, any physician orders, certificates of medical necessity, signed and dated delivery slips, documentation of all services, equipment, and maintenance received, and other information as appropriate for the equipment provided.

(7) License applicants who, upon initial inspection, are found not to comply with applicable licensing standards, shall be notified by the Board office of the areas of noncompliance and shall be re-inspected for compliance upon application and payment of a re-inspection fee of no more than three hundred dollars (\$300), as established by the Board.

(8) The Board may conduct random inspections upon the filing of a complaint, application for renewal of a license, for cause, and as otherwise necessary to ensure the integrity and effectiveness of the licensing process. Licensees who fail to pass an inspection related to the filing of a complaint, for cause, upon an application for license renewal or for any other cause must cease and desist their operations upon receipt of written notice of failure to pass inspection until they have come into compliance with all applicable standards, unless the Board negotiates a plan for compliance with the licensee and conducts a further inspection for compliance at a time to be determined by the Board. Licensees subject to re-inspection will be required to remit an additional re-inspection fee of two hundred and fifty dollars (\$250).

(9) Upon notice of failure to pass inspection, an applicant or licensee shall have thirty (30) days to appeal the inspection results, or be subject to penalties pursuant to Section 34-14C-6, Code of Ala., 1975. Upon appeal, a provider shall have the right to an inspection review or a new inspection, in accordance with Rule 473-X-7-.01.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

473-X-5-.01. Ethics.

(1) The Board hereby incorporates by reference the Medicare Supplier Standards [found at 42 C.F.R. pt. 424, sec 424.57(c), effective December 11, 2000]; with the exception of accreditation standards.

(2) Dishonorable, unethical or unprofessional conduct within the meaning of Section 34-14C-6(e)(9), Code of Ala., 1975, is interpreted to include, but is not limited to, the following acts or practices:

- a. (a) Practicing, condoning, facilitating or collaborating with any form of discrimination against any person or group on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or any other preference or personal characteristic, condition or status.
- (b) Failing to offer all facts regarding services or equipment to the consumer prior to administration of services (such as proper use and maintenance of equipment, warranty information, etc.). Patients and caregivers shall be informed of their rights and obligations regarding the sale, rental, and service of home medical equipment.
- (c) Failing to protect the privacy of patient information and disclosing such information without proper authorization, except as required by law.
- (d) Performing or allowing employees to perform professional services beyond their scope of practice and competency.
- (e) Failing to establish and maintain client records.
- (f) Intentional submission of fraudulent claims for services to any person or entity, including, but not limited to, health insurance companies or health service plans or third party payors.
- (g) Failure to abide by federal and local laws and regulations governing the home medical equipment industry.
- (h) Participating, directly or indirectly, with a source of patient referrals, in any arrangement which interferes with a consumer's right to choose a home medical equipment supplier.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

473-X-6-.01. Denial, Revocation, Suspension.

(1) 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 Code of Ala. 1975, Sections 34-14C-1, et seq., and the Alabama Administrative Procedure Act.

(2) 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. Complaints shall be in a form prescribed by the Board and shall be verified under oath by the complainant. If the Board determines that the complaint is substantive and relevant, it may inspect the operations of the provider to determine compliance with the Board's rules and regulations. Upon receipt of the inspection report, the Board may dismiss the complaint or send a notice of non-compliance to the licensee, which may be appealed through the Board in accordance with the procedures set forth in Rule 473-X-7-.01.

(3) A copy of the charges, including notice of the time and place of hearing, will be served by certified mail, return receipt requested, at least twenty-one (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 ten (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 (7) 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.

(4) Any hearings related to matters before the Board shall be conducted in Montgomery County, Alabama.

(5) The Board may invoke disciplinary action as outlined in paragraph (6) below, including the denial or suspension of an application for an initial or renewal license, whenever it is established to the satisfaction of the Board, after a hearing held in accordance with Code of Ala. 1975, Sections 34-14C-1, et seq., and the Alabama Administrative Procedure Act, that a person is guilty of any of the following acts:

(b) (a) Violation of any provision of the Board's licensure act or any rule or regulation of the Board.

(b) Making a material misrepresentation in furnishing information to the Board.

(c) Making a misrepresentation to obtain licensure or to otherwise violate the Board's licensure act or the rules and regulations of the Board.

(d) 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.

(e) Gross negligence or gross misconduct in providing home medical equipment services.

(f) Aiding, assisting, or willingly permitting another person to violate any provision of the Board's licensure act or rule or regulation of the Board.

(g) Failing, within thirty (30) days, to provide information in response to a written request of the Board.

(h) Failing to cooperate with an inspection or with an investigation conducted by the Board.

(i) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

(j) 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.

(k) 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.

(l) A finding that a licensee on probationary status has violated the terms of the probation.

(m) 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, reports, or billings filed with state or federal agencies or departments.

(n) 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.

(o) Failure to comply with state or federal laws and regulations concerning home medical equipment services providers.

(p) Solicitation of home medical equipment services using false or misleading advertising.

(q) Failure to prominently display a license at each licensed location.

(r) Failure to report a change of name, address, control, ownership, or administration to the Board within thirty (30) days after the date of change.

(6) When the Board finds any person guilty of any of the grounds set forth in paragraph five (5), it may enter an order imposing one or more of the following penalties:

(a) A letter of reprimand.

(b) Probation for a period of time and subject to such conditions as may be prescribed by the Board.

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

(d) Suspension of a license for a period of time established by the Board, with or

without automatic reinstatement.

(e) Revocation of a license.

(f) 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.

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

(7) 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.

(8) The Board may informally resolve any alleged violation of its licensure act or rules and regulations by stipulation, agreed settlement, or consent order, in lieu of an administrative hearing.

(9) In addition to any other disciplinary action authorized hereunder, the Board may levy and collect administrative fines for violations of the Board's licensure act or its rules and regulations in an amount of up to one thousand dollars (\$1,000) for each violation.

(10) Any entity or person found to be providing home medical equipment services without a license shall be subject to an administrative fine of up to one thousand dollars (\$1,000) per day that services were provided without a license and may be administratively enjoined from providing such services until such time as the person or entity comes into compliance. Any person or entity subject to the penalties prescribed in this paragraph (10) may pursue an appeal through the Board in accordance with the procedures set forth in Rule 473-X-7-.01.

(11) The Board may seek injunctive relief against any person or entity found to be in violation of its licensure act or its rules and regulations in addition to any other penalty or disciplinary action authorized hereunder. 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; provided, however, that no civil penalty shall be awarded to the Board if an administrative fine is assessed pursuant to paragraph ten (10).

(12) Upon the revocation or suspension of a license, the licensee shall immediately

surrender the license to the Board. If the licensee fails to do so, the Board may seize the license.

(13) 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.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

473-X-7-.01. Appeal to the Board.

(1) Any entity or person against whom an administrative fine has been levied by the Board for providing home medical equipment services without a license as required under Section 34-14C-4, Code of Ala. 1975, or who has been administratively enjoined from providing home medical equipment services without such a license, shall be entitled to pursue an appeal through the Board for reconsideration of such decisions rendered after a contested case proceeding. This rule shall also govern appeals of inspection results from any entity or person to whom a written notice of failure to pass inspection has been issued by the Board.

(2) The Board shall entertain written requests for reconsideration of inspection results or of its decision in a contested case proceeding as set forth in paragraph (1) above in an appeal hearing by either party thereto if timely submitted within thirty (30) days from the rendition of said decision in a written final order adopted by the Board.

(3) The request should be based upon newly discovered evidence which would justify relief from the decision rendered.

(4) Such requests should include, by written memorandum or brief, the detailed basis for such reconsideration. The opposing party shall have the opportunity to present a written reply memorandum or brief challenging such basis within thirty (30) days from the submission of the request for reconsideration.

(5)The Board shall review the written arguments of the parties at its next regular or special meeting and, based upon such review, determine in its discretion by a majority vote of a quorum of its members whether to sustain its previous decision or grant such relief from the decision as may be appropriate. In reviewing the request, the Board may, at its sole discretion, hear further oral argument or new sworn testimony or suggest supplemental responses. The Board shall render a written order setting forth the determination of the Board within thirty (30) days of the vote reflecting the determination of the Board.

(6)The filing of the request for reconsideration shall be at the option of the parties and should not be deemed as a prerequisite to, or hindrance of, either party's right to judicial review of a Board decision in accordance with the procedures provided under the Alabama Administrative Procedure Act, Chapter 22, Title 41, Code of Ala. 1975.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.

Filed: July 9, 2014 **Effective Date:** August 13, 2014

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.

(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.

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

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

HISTORY:

Author: *The Alabama Board of Home Medical Equipment*

Statutory Authority: *Code of Alabama, 1975 §34-14C1 thru §34-14C8, Act #2000-739, HB 419 of the 2000 Regular Session.*

Filed: July 9, 2014 **Effective Date:** August 13, 2014

APPENDICES 2 - Forms associated with these Rules and Regulations.

Application for Initial License

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.