

1 HB569
2 139348-1
3 By Representative Nordgren
4 RFD: Boards, Agencies and Commissions
5 First Read: 20-MAR-12

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8 SYNOPSIS: Under existing law, the Home Medical
9 Equipment Services Providers Board provides for the
10 licensing and regulation of home medical equipment
11 services providers.

12 This bill would rename the board the Board
13 of Home Medical Equipment.

14 This bill would provide for the removal of
15 board members and for the authority of the board to
16 employ an administrator and other necessary
17 employees, adopt a seal, and establish and charge
18 reasonable fees.

19 This bill would prohibit the practice of
20 providing home medical equipment services without a
21 license and would provide a process for late
22 renewal of a license and renewal of a lapsed
23 license.

24 This bill would provide further for the
25 authority of the board and the grounds necessary to
26 deny, revoke, or suspend a license, and would
27 provide for disciplinary hearings, administrative

1 fines, injunctions, and other penalties against
2 violators.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official ReCompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL

25 TO BE ENTITLED

26 AN ACT
27

1 To amend Sections 34-14C-1, 34-14C-2, 34-14C-4,
2 34-14C-4.1, 34-14C-5, 34-14C-6, and 34-14C-8, Code of Alabama
3 1975, relating to the Home Medical Equipment Services
4 Providers Board, to rename the board the Board of Home Medical
5 Equipment; to provide for the removal of board members; to
6 authorize the board to employ an administrator and other
7 necessary employees, adopt a seal, and establish and charge
8 reasonable fees; to prohibit the unlicensed practice of
9 providing home medical equipment services; to provide for late
10 renewal and renewal of a lapsed license; to authorize the
11 board to deny, revoke, or suspend a license; to provide for
12 disciplinary hearings; to provide for administrative fines,
13 injunctions, and other penalties against violators; and in
14 connection therewith to have as its purpose or effect the
15 requirement of a new or increased expenditure of local funds
16 within the meaning of Amendment 621 of the Constitution of
17 Alabama of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of Alabama of 1901,
19 as amended.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

24 "§34-14C-1.

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

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

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

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

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

18 "§34-14C-2.

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

1 persons representing the ~~Home Medical Equipment Services~~
2 ~~Provider~~ home medical equipment industry shall be selected
3 from a list submitted by the Alabama Durable Medical Equipment
4 Association or its successor. Board members shall each be
5 citizens of this state and shall have no record of sanctions
6 related to fraud under federal or state law. The membership of
7 the board shall be inclusive and reflect the racial, gender,
8 geographic, urban/rural, and economic diversity of the state.

9 "(b) The initial members appointed to the board
10 shall serve for terms of three to five years, with one-third
11 of the board being replaced each year, beginning in year four.
12 ~~The terms may be renewed for successive three-year periods~~
13 Thereafter, subsequent appointments shall be for a term of
14 four years. No member shall serve more than two consecutive
15 terms of office. An appointment shall end on the anniversary
16 date of the original appointment and each member shall hold
17 office until his or her successor is appointed by the
18 Governor.

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

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

1 "(e) Any vacancy on the board ~~must~~ shall be filled
2 by the Governor within 60 days. An appointment to fill a
3 vacancy shall be for the duration of the unexpired term. If a
4 vacancy occurs among those members who represent the home
5 medical equipment ~~services provider~~ industry, the appointment
6 shall be made from a list submitted by the Alabama Durable
7 Medical Equipment Association, or its successor.

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

12 "(1) Misfeasance.

13 "(2) Malfeasance.

14 "(3) Neglect of duty.

15 "(4) Conviction of a felony.

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

17 "(g) The board may employ an administrator, who
18 shall be exempt from the classified service of the state and
19 shall serve at the pleasure of the board, and may employ
20 attorneys, experts, investigators, and other employees as
21 necessary to discharge duties of the board and administer this
22 chapter. The board shall determine the duties and fix the
23 compensation of the administrator and other employees, subject
24 to the general laws of the state.

25 "(h) The board shall adopt a seal, which shall be
26 affixed to all licenses issued by the board, and shall have

1 all other powers necessary and proper for performing official
2 duties.

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

8 "(j) Members of the board are immune from liability
9 for all good faith acts performed in the exercise of their
10 duties as members of the board.

11 "§34-14C-4.

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

1 "(b) A license applicant shall submit the
2 application for licensing or renewal to the board on a form
3 promulgated and required by the board. In-state and
4 out-of-state applicants shall pay a reasonable nonrefundable
5 fee established by the board at the time the application is
6 submitted. The board ~~shall have the authority to~~ may set
7 reasonable fees for in-state and out-of-state applicants to
8 obtain a license. ~~The license~~ Upon satisfaction of all
9 applicable standards and requirements for licensure, the board
10 shall issue a license certificate permitting the licensee to
11 engage in providing home medical equipment services ~~shall be~~
12 ~~effective upon written notification from the board that the~~
13 ~~applicant meets the standards and has complied with all~~
14 ~~requirements for licensing.~~ The certificate shall be displayed
15 prominently at each licensed location. No person, partnership,
16 or corporation shall provide home medical equipment services
17 without first obtaining a license issued by the board pursuant
18 to this chapter.

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

23 "(d) ~~Licenses~~ Beginning on the effective date of
24 this amendatory act, licenses issued pursuant to this chapter
25 shall expire on ~~the anniversary date of the original license~~
26 ~~unless renewed for an additional one-year period~~ August 31 of
27 the following year. A license may be renewed within the 60-day

1 period after August 31 upon payment of the required fee and a
2 late fee as established by rule of the board. Any license that
3 is not renewed before the end of the 60-day grace period shall
4 lapse. A lapsed license may not be renewed unless the holder
5 reapplies and satisfies current rules for initial licensure.

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

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

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

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

1 ~~Ethics Commission~~ authorized by Sections 36-7-20 to 36-7-22,
2 inclusive, shall be provided by the out-of-state applicant for
3 all inspections conducted at the physical out-of-state
4 location.

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

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

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

23 "§34-14C-4.1.

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

1 "§34-14C-5.

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

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

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

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

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

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

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

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

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

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

8 "§34-14C-6.

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

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

15 "(c) The board may institute a hearing for denial,
16 suspension, or revocation of a license or any person may file
17 a complaint with the board seeking the denial, suspension, or
18 revocation of an application for licensure or license issued
19 by the board or the investigation of any person or entity
20 providing home medical equipment services. A complaint shall
21 be in a form prescribed by the board.

22 "(d) A copy of the charges, including notice of the
23 time and place of hearing, shall be served by certified mail,
24 return receipt requested, at least 21 days before the
25 scheduled hearing date to the most recent address of the
26 licensee on file with the board, or to the last known address
27 of any unlicensed person providing home medical equipment

1 services. If the notice and opportunity for hearing is refused
2 or the return receipt has not been received by the board
3 within 10 days before the scheduled hearing, the licensee or
4 unlicensed person may be served by mailing the charges and
5 notice by first class mail, at least seven days before the
6 hearing date, to the most recent address on file with the
7 board, or to the last known address of the unlicensed person
8 providing home medical equipment services.

9 "(e) The board may invoke disciplinary action as
10 outlined in subsection (f) whenever it is established to the
11 satisfaction of the board, after a hearing as provided in this
12 section, that any person is guilty of any of the following
13 acts:

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

16 "(2) Making a material representation in furnishing
17 information to the board.

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

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

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

1 "(6) Aiding, assisting, or willingly permitting
2 another person in violating this chapter or rule of the board.

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

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

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

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

14 "(11) Directly or indirectly giving to or receiving
15 from any person, firm, association, or business entity any
16 fee, commission, rebate, or other form of compensation for any
17 services not actually or personally rendered.

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

20 "(13) Willfully making or filing false records,
21 reports, or billings in the course of providing home medical
22 equipment services including, but not limited to, false
23 records, reports, or billings filed with state or federal
24 agencies or departments.

25 "(14) The use of any words, abbreviations, figures,
26 or letters with the intention of indicating practice as a home

1 medical equipment services provider without having first
2 obtained a license from this board.

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

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

8 "(17) Failure to display a license in accordance
9 with this chapter.

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

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

16 "(1) A letter of reprimand.

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

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

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

25 "(5) Revocation of a license.

26 "(6) Payment of restitution to each consumer
27 negatively affected by the prohibited act. Proof of such

1 restitution shall be a signed and notarized release executed
2 by the consumer or the estate of the consumer.

3 "(7) Assessment of the costs of the disciplinary
4 proceedings.

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

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

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

20 "(j) Any ~~(b)~~ An entity or person found to be
21 providing home medical equipment services without a license as
22 required by this chapter may be administratively enjoined by
23 the board from providing services until such time as the
24 entity or person complies with this chapter.

25 "(k) In addition to any other disciplinary action
26 authorized by this chapter, the board may levy and collect
27 administrative fines for violations of this chapter or the

1 rules or standards of the board in an amount of up to one
2 thousand dollars (\$1,000) for each violation.

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

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

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

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

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

25 "(q) Any person aggrieved by an adverse action of
26 the board may appeal the action to the Circuit Court of

1 Montgomery County in accordance with the Alabama
2 Administrative Procedure Act.

3 "§34-14C-8.

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

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

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