

1 HB226
2 156339-4
3 By Representative Johnson (R)
4 RFD: Boards, Agencies and Commissions
5 First Read: 14-JAN-14

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ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-14C-1, 34-14C-2, 34-14C-3, 34-14C-4, 34-14C-4.1, 34-14C-5, 34-14C-6, 34-14C-7, and

1 34-14C-8 of the Code of Alabama 1975, are amended to read as
2 follows:

3 "§34-14C-1.

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

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

8 "(2) HOME MEDICAL EQUIPMENT. Medical devices usable
9 in a residential setting, as defined in regulations
10 established by the board.

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

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

23 "§34-14C-2.

24 "(a) ~~Within 90 days of August 1, 2000, the~~ The
25 Governor shall appoint a minimum of nine persons to serve on

1 the Board of Home Medical Equipment ~~Services Providers~~, such
2 persons to include a majority who are ~~representatives of~~
3 employed in the home medical equipment ~~services~~ industry, and
4 at least one person from each of the following categories: A
5 consumer of home medical equipment services, a physician, a
6 representative from the acute-care hospital community, and a
7 representative from the home health agency community. Those
8 persons ~~representing~~ employed in the ~~Home Medical Equipment~~
9 ~~Services Provider~~ home medical equipment industry shall be
10 selected from a list submitted by the Alabama Durable Medical
11 Equipment Association, or its successor. ~~The consumer member~~
12 shall be selected from a list of names submitted by the
13 Governor's Office on Disability, or its successor. The
14 physician member shall be selected from a list of names
15 submitted by the Medical Association of Alabama, or its
16 successor. The acute-care hospital community member shall be
17 selected from a list submitted by the Alabama Hospital
18 Association, or its successor. The home health agency
19 community member shall be selected from a list of names
20 submitted by the Home Care Association of Alabama, or its
21 successor. All lists submitted for nominations shall include
22 at least two names for each appointed position to be filled.
23 Board members shall each be citizens of this state and shall
24 have no record of sanctions related to fraud under federal or
25 state law. The membership of the board shall be inclusive and

1 reflect the racial, gender, geographic, urban/rural, and
2 economic diversity of the state.

3 "(b) The initial members appointed to the board
4 shall serve for terms of three to five years, with one-third
5 of the board being replaced each year, beginning in year four.
6 ~~The terms may be renewed for successive three-year periods.~~
7 Thereafter, subsequent appointments shall be for a term of
8 four years. No member shall serve more than two consecutive
9 terms of office. An appointment shall end on October 1, four
10 years from the date of the last term, and each member shall
11 hold office until his or her successor is appointed by the
12 Governor.

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

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

22 "(e) ~~Any vacancy on the board must be filled by the~~
23 ~~Governor within 60 days.~~ Whenever a vacancy occurs on the
24 board due to the death or resignation of a currently appointed
25 board member, or other like cause, the vacancy shall be filled

1 by appointment by the Governor for the remainder of the
2 unexpired term of the member, as provided under subsection
3 (b). If a vacancy occurs among those members who ~~represent~~ are
4 employed in the home medical equipment ~~services provider~~
5 industry, the appointment shall be made from a list submitted
6 by the Alabama Durable Medical Equipment Association or its
7 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 executive director, who~~
18 ~~shall be in the unclassified service of the state, as defined~~
19 ~~in the Merit System Act, and shall serve at the pleasure of~~
20 ~~the board, and may employ attorneys, experts, inspectors,~~
21 ~~investigators, and other employees as necessary to discharge~~
22 ~~the duties of the board and administer this chapter. The board~~
23 ~~shall determine the duties and fix the compensation of the~~
24 ~~executive director and other employees, subject to the general~~
25 ~~laws of the state.~~

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

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

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

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

18 "§34-14C-3.

19 ~~"(a) Through consultation with current members in~~
 20 ~~good standing of the Alabama Durable Medical Equipment~~
 21 ~~Association or its successor, the~~ The board shall adopt
 22 regulations that specify the medical equipment to be included
 23 in this chapter, set standards for the licensure of entities
 24 which provide home medical equipment services, and govern the

1 safety and quality of home medical equipment service
2 providers.

3 "(b) All home medical equipment services providers
4 shall:

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

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

14 "§34-14C-4.

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

1 ~~Subsection a-f, Alabama Administrative Code, or its~~
2 ~~successors, and may be subject to inspection by the board. A~~
3 provider of home medical equipment services that has a
4 principal place of business outside this state shall maintain
5 at least one physical location within this state, each of
6 which shall be licensed.

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

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

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

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

1 of a reasonable reinspection fee established by the board of
2 up to ~~one three hundred fifty~~ dollars ~~(\$150)~~ (\$300).

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

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

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

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

23 ~~"(j)~~ (i) The board shall adopt and maintain standards
24 for the individuals charged with conducting the inspections
25 for the purpose of determining compliance with the

1 requirements of this chapter. Board employees or contractors
 2 may be authorized to conduct inspections. ~~Out-of-state~~
 3 ~~inspections shall be limited to no more than two employees,~~
 4 ~~contractors, or inspectors of the board per visit.~~

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

11 "§34-14C-4.1.

12 "The Board of Home Medical Equipment ~~Services~~
 13 ~~Providers~~ may establish by rule, and charge and collect,
 14 reasonable inspection fees pursuant to the Alabama
 15 Administrative Procedure Act.

16 "§34-14C-5.

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

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

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

24 "(3) Health care practitioners legally eligible to
 25 order or prescribe home medical equipment, or who use home

1 medical equipment to treat patients in locations other than
2 the patient's residence, including, but not limited to,
3 physicians, nurses, physical therapists, respiratory
4 therapists, speech therapists, occupational therapists,
5 optometrists, chiropractors, and podiatrists, except for those
6 practitioners, other than a licensed physician practicing
7 medicine, who provide home medical equipment services in a
8 patient's residence.

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

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

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

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

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

24 "(8) Governmental agencies, including fire districts
25 which provide emergency medical services, and contractors to

1 governmental agencies whose business deals only with the
2 contracted agency.

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

6 "§34-14C-6.

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

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

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

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

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

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

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

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

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

22 "(4) Conviction of or entry of a plea of guilty or
23 nolo contendere to any crime that is a felony under the laws
24 of the United States, or any state or territory of the United
25 States, or to any crime that is a misdemeanor, if an essential

1 element of the crime is dishonesty or is directly related to
2 providing home medical equipment services.

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

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

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

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

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

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

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

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

1 "(13) Willfully making or filing false records,
2 reports, or billings in the course of providing home medical
3 equipment services including, but not limited to, false
4 records, reports, or billings filed with state or federal
5 agencies or departments.

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

10 "(15) Failure to comply with state or federal laws
11 and regulations concerning home medical equipment services
12 providers.

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

15 "(17) Failure to display a license in accordance
16 with this chapter.

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

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

24 "(1) A letter of reprimand.

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

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

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

9 "(5) Revocation of a license.

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

14 "(7) Assessment of the costs of the disciplinary
15 proceedings.

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

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

24 ~~"(a) An~~ (i) Any entity or person found to be
25 providing home medical equipment services without a license as

1 required by this chapter shall be subject to an administrative
2 fine of up to one thousand dollars (\$1,000) per day that
3 services were provided without a license. Funds collected
4 pursuant to this chapter shall be allocated to the
5 administration of the program.

6 ~~"(b) An~~ (j) Any entity or person found to be
7 providing home medical equipment services without a license as
8 required by this chapter may be administratively enjoined by
9 the board from providing services until such time as the
10 entity or person complies with this chapter.

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

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

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

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

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

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

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

18 "§34-14C-7.

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

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

7 "§34-14C-8.

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

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

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

