

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.