

1 SB104
2 156339-3
3 By Senator Bussman
4 RFD: Health
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 34-14C-1, 34-14C-2, 34-14C-3,
12 34-14C-4, 34-14C-4.1, 34-14C-5, 34-14C-6, 34-14C-7, and
13 34-14C-8, Code of Alabama 1975, relating to the Home Medical
14 Equipment Services Providers Board, to rename the board the
15 Board of Home Medical Equipment; to provide for the removal of
16 board members; to authorize the board to employ an executive
17 director and other necessary employees, adopt a seal, and
18 establish and charge reasonable fees; to further provide for
19 the licensing of out-of-state providers; to prohibit the
20 unlicensed practice of providing home medical equipment
21 services; to provide for late renewal and renewal of a lapsed
22 license; to authorize the board to deny, revoke, or suspend a
23 license; to provide for disciplinary hearings; to provide for
24 administrative fines, injunctions, and other penalties against
25 violators; and in connection therewith would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds within the meaning of Amendment 621

1 of the Constitution of Alabama of 1901, now appearing as
2 Section 111.05 of the Official ReCompilation of the
3 Constitution of Alabama of 1901, as amended.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Sections 34-14C-1, 34-14C-2, 34-14C-3,
6 34-14C-4, 34-14C-4.1, 34-14C-5, 34-14C-6, 34-14C-7, and
7 34-14C-8 of the Code of Alabama 1975, are amended to read as
8 follows:

9 "§34-14C-1.

10 "As used in this chapter, the following terms shall
11 have the following meanings:

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

14 "(2) HOME MEDICAL EQUIPMENT. Medical devices usable
15 in a residential setting, as defined in regulations
16 established by the board.

17 "(3) HOME MEDICAL EQUIPMENT SERVICES. The
18 advertisement, sale, rental, delivery, installation,
19 maintenance, replacement of, or instruction in the use of
20 medical equipment and related supplies used by a sick or
21 disabled individual to allow that individual to obtain care or
22 treatment and be maintained in a residential setting.

23 "(4) HOME MEDICAL EQUIPMENT SERVICES PROVIDER. A
24 corporation, other business entity, or person engaged in the
25 business of providing home medical equipment services, either
26 directly or through a contractual arrangement, to an unrelated

1 sick or disabled individual in the residence of that
2 individual.

3 "§34-14C-2.

4 "(a) ~~Within 90 days of August 1, 2000, the~~ The
5 Governor shall appoint a minimum of nine persons to serve on
6 the Board of Home Medical Equipment Services Providers, such
7 persons to include a majority who are ~~representatives of~~
8 employed in the home medical equipment ~~services~~ industry, and
9 at least one person from each of the following categories: A
10 consumer of home medical equipment services, a physician, a
11 representative from the acute-care hospital community, and a
12 representative from the home health agency community. Those
13 persons ~~representing~~ employed in the Home Medical Equipment
14 ~~Services Provider~~ home medical equipment industry shall be
15 selected from a list submitted by the Alabama Durable Medical
16 Equipment Association, or its successor. The consumer member
17 shall be selected from a list of names submitted by the
18 Governor's Office on Disability, or its successor. The
19 physician member shall be selected from a list of names
20 submitted by the Medical Association of Alabama, or its
21 successor. The acute-care hospital community member shall be
22 selected from a list submitted by the Alabama Hospital
23 Association, or its successor. The home health agency
24 community member shall be selected from a list of names
25 submitted by the Home Care Association of Alabama, or its
26 successor. All lists submitted for nominations shall include
27 at least two names for each appointed position to be filled.

1 Board members shall each be citizens of this state and shall
2 have no record of sanctions related to fraud under federal or
3 state law. The membership of the board shall be inclusive and
4 reflect the racial, gender, geographic, urban/rural, and
5 economic diversity of the state.

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

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

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

25 "~~(e) Any vacancy on the board must be filled by the~~
26 ~~Governor within 60 days.~~ Whenever a vacancy occurs on the
27 board due to the death or resignation of a currently appointed

1 board member, or other like cause, the vacancy shall be filled
2 by appointment by the Governor for the remainder of the
3 unexpired term of the member, as provided under subsection
4 (b). If a vacancy occurs among those members who ~~represent~~ are
5 employed in the home medical equipment services provider
6 industry, the appointment shall be made from a list submitted
7 by the Alabama Durable Medical Equipment Association or its
8 successor.

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

13 "(1) Misfeasance.

14 "(2) Malfeasance.

15 "(3) Neglect of duty.

16 "(4) Conviction of a felony.

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

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

22 "(h) The board shall adopt a seal, which shall be
23 affixed to all licenses issued by the board, and shall have
24 all other powers necessary and proper for performing official
25 duties.

26 "(i) The board may establish and charge reasonable
27 fees relating to the administration and enforcement of this

1 chapter including, but not limited to, application,
2 processing, copying, mailing, filing, and other fees as
3 necessary to offset costs.

4 "(j) Absent negligence, recklessness, wantonness, or
5 deliberate misconduct, members of the board are immune from
6 liability for all good faith acts performed in the exercise of
7 their duties as members of the board.

8 "§34-14C-3.

9 ~~"(a) Through consultation with current members in~~
10 ~~good standing of the Alabama Durable Medical Equipment~~
11 ~~Association or its successor, the The board shall adopt~~
12 regulations that specify the medical equipment to be included
13 in this chapter, set standards for the licensure of entities
14 which provide home medical equipment services, and govern the
15 safety and quality of home medical equipment service
16 providers.

17 "(b) All home medical equipment services providers
18 shall:

19 "(1) Comply with all applicable federal and state
20 laws and regulations governing the safety of home medical
21 equipment services provider facilities and delivery vehicles,
22 the safety and quality of home medical equipment, and the
23 safety, quality, and effectiveness of home medical equipment
24 service procedures.

25 "(2) Comply with any additional standards and
26 testing requirements, as duly promulgated by the board and
27 required for licensure.

1 "§34-14C-4.

2 "(a) Except as otherwise provided in this chapter, a
3 home medical equipment services provider shall be licensed
4 annually by the board before the provider may engage in the
5 provision of home medical equipment services. In Alabama, when
6 a single business entity provides home medical equipment
7 services from more than one location within the state, each
8 such location shall be ~~required to obtain a license on its own~~
9 ~~merit~~ licensed. ~~Out-of-state home medical equipment services~~
10 ~~providers are not required to maintain a physical location in~~
11 ~~state; however, out-of-state applicants must provide a~~
12 ~~physical location meeting requirements of Section 473-X-4-.01,~~
13 ~~Subsection a-f, Alabama Administrative Code, or its~~
14 ~~successors, and may be subject to inspection by the board. A~~
15 provider of home medical equipment services that has a
16 principal place of business outside this state shall maintain
17 at least one physical location within this state, each of
18 which shall be licensed.

19 "(b) A license applicant shall submit the
20 application for licensing or renewal to the board on a form
21 promulgated and required by the board. ~~In-state and~~
22 ~~out-of-state applicants~~ Applicants shall pay a reasonable
23 nonrefundable fee established by the board at the time the
24 application is submitted. The board shall have the authority
25 to set reasonable fees for ~~in-state and out-of-state~~
26 applicants to obtain a license. ~~The license~~ Upon satisfaction
27 of all applicable standards and requirements for licensure,

1 the board shall issue a license certificate permitting the
2 licensee to engage in providing home medical equipment
3 services shall be effective upon written notification from the
4 board that the applicant meets the standards and has complied
5 with all requirements for licensing. The certificate shall be
6 displayed prominently at each licensed location. No person,
7 partnership, corporation, or other legal entity that is not
8 otherwise exempted under this chapter shall provide home
9 medical equipment services without first obtaining a license
10 issued by the board.

11 "(c) Accreditation by the Joint Commission on
12 Accreditation of Healthcare Organizations, the Community
13 Health Accreditation Program, or other accrediting entities
14 shall not be substituted for compliance with this chapter.

15 "(d) ~~Licenses Commencing on the effective date of~~
16 the act amending this subsection, licenses issued pursuant to
17 this chapter shall expire on the anniversary date of the
18 original license unless renewed for an additional one-year
19 period August 31 of the year following issuance. A license may
20 be renewed within the 60-day period after August 31 upon
21 payment of both the required fee and a late fee as established
22 by rule of the board. Any license that is not renewed before
23 the end of the 60-day grace period shall lapse. A lapsed
24 license may not be renewed unless the holder reapplies and
25 satisfies then current requirements for initial licensure.

26 "(e) ~~Home medical equipment service providers~~
27 License applicants who, upon initial inspection, are found not

1 to comply with applicable licensing standards, ~~may be issued a~~
2 ~~provisional license valid for six months. The board shall~~
3 ~~advise the provider~~ shall be notified by the board of the
4 areas of noncompliance ~~contemporaneous with the issuance of~~
5 ~~the provisional license,~~ and shall ~~reinspect the provider~~ be
6 reinspected for compliance ~~between four and six months after~~
7 ~~the provisional license is issued~~ upon application and payment
8 of a reasonable reinspection fee established by the board of
9 up to ~~one three hundred fifty dollars~~ ~~(\$150)~~ (\$300).

10 "(f) Except as provided in this chapter, the board
11 may inspect all license applicants to determine compliance
12 with the requirements of this chapter prior to the issuance of
13 a license.

14 "(g) The board may conduct random inspections upon
15 application for renewal of a license, for cause, and as
16 necessary to ensure the integrity and effectiveness of the
17 licensing process.

18 "~~(h) Employees, contractors, or inspectors of the~~
19 ~~board may conduct inspections of out-of-state facilities upon~~
20 ~~application from out-of-state applicants for licensure and~~
21 ~~renewal. Travel allowances, as allowed by the Alabama State~~
22 ~~Ethics Commission, shall be provided by the out-of-state~~
23 ~~applicant for all inspections conducted at the physical~~
24 ~~out-of-state location.~~

25 "~~(i)~~ (h) At any time upon the filing of a
26 substantive, relevant complaint of a consumer of services or
27 other qualified source as identified by the board, the board

1 may inspect the operations of the provider to determine
2 compliance with the requirements of this chapter.

3 ~~"(j)(i)~~ The board shall adopt and maintain standards
4 for the individuals charged with conducting the inspections
5 for the purpose of determining compliance with the
6 requirements of this chapter. Board employees or contractors
7 may be authorized to conduct inspections. ~~Out-of-state~~
8 ~~inspections shall be limited to no more than two employees,~~
9 ~~contractors, or inspectors of the board per visit.~~

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

16 "§34-14C-4.1.

17 "The Board of Home Medical Equipment ~~Services~~
18 ~~Providers~~ may establish by rule, and charge and collect,
19 reasonable inspection fees pursuant to the Alabama
20 Administrative Procedure Act.

21 "§34-14C-5.

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

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

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

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

14 Nothing in this chapter shall be construed as
15 prohibiting or restricting a licensed physician who is
16 practicing medicine, nor shall anything in this chapter be
17 construed as requiring a physician practicing medicine, to be
18 licensed as a home medical equipment services provider.

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

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

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

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

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

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

11 "§34-14C-6.

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

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

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

26 "(d) A copy of the charges, including notice of the
27 time and place of hearing, shall be served by certified mail,

1 return receipt requested, at least 21 days before the
2 scheduled hearing date to the most recent address of the
3 applicant or licensee on file with the board, or to the last
4 known address of any unlicensed person or entity providing
5 home medical equipment services. If the notice and opportunity
6 for hearing is refused or the return receipt has not been
7 received by the board within 10 days before the scheduled
8 hearing, the applicant, licensee, or unlicensed person or
9 entity may be served by mailing the charges and notice by
10 first class mail, at least seven days before the hearing date,
11 to the most recent address on file with the board, or to the
12 last known address of the unlicensed person or entity
13 providing home medical equipment services.

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

19 "(1) Violation of this chapter or a rule of the
20 board.

21 "(2) Making a material misrepresentation in
22 furnishing information to the board.

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

25 "(4) Conviction of or entry of a plea of guilty or
26 nolo contendere to any crime that is a felony under the laws
27 of the United States, or any state or territory of the United

1 States, or to any crime that is a misdemeanor, if an essential
2 element of the crime is dishonesty or is directly related to
3 providing home medical equipment services.

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

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

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

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

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

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

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

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

26 "(13) Willfully making or filing false records,
27 reports, or billings in the course of providing home medical

1 equipment services including, but not limited to, false
2 records, reports, or billings filed with state or federal
3 agencies or departments.

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

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

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

13 "(17) Failure to display a license in accordance
14 with this chapter.

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

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

22 "(1) A letter of reprimand.

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

26 "(3) Denial of an application for an initial or
27 renewal license.

1 "(4) Suspension of a license for a period of time
2 established by the board, with or without automatic
3 reinstatement.

4 "(5) Revocation of a license.

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

9 "(7) Assessment of the costs of the disciplinary
10 proceedings.

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

15 "(h) The board may informally resolve any alleged
16 violation of this chapter or rule of the board by stipulation,
17 agreed settlement, or consent order, in lieu of an
18 administrative hearing.

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

26 "~~(b)~~ An (j) Any entity or person found to be
27 providing home medical equipment services without a license as

1 required by this chapter may be administratively enjoined by
2 the board from providing services until such time as the
3 entity or person complies with this chapter.

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

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

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

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

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

1 "(p) Upon the revocation or suspension of a license,
2 the licensee shall immediately surrender the license to the
3 board, and if the licensee fails to do so, the board may seize
4 the license.

5 "(q) Any person aggrieved by an adverse action of
6 the board may appeal the action to the Circuit Court of
7 Montgomery County in accordance with the Alabama
8 Administrative Procedure Act.

9 "§34-14C-7.

10 "There is hereby established a separate special
11 revenue trust fund in the State Treasury to be known as the
12 Home Medical Equipment ~~Services~~ Fund. All receipts collected
13 by the board under the provisions of this chapter are to be
14 deposited into this fund and shall be used only to carry out
15 the provisions of this chapter. The receipts shall be
16 disbursed only by warrant of the state Comptroller upon the
17 State Treasury, upon itemized vouchers approved by the
18 executive director. No funds shall be withdrawn or expended
19 except as budgeted and allotted according to Sections 41-4-80
20 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and
21 only in amounts as stipulated in the general appropriations
22 bill or other appropriations bills.

23 "§34-14C-8.

24 ~~"The home medical equipment services providers board~~
25 ~~shall be subject to the Alabama Sunset Law, Title 41, Chapter~~
26 ~~20,~~ as an enumerated agency as provided in Section 41-20-3,
27 and shall have a termination date of October 1, 2002, and

1 every four years thereafter, unless continued pursuant to the
2 Alabama Sunset Law."

3 Section 2. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

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

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Senate

Read for the first time and referred to the Senate
committee on Health..... 14-JAN-14

Read for the second time and placed on the calen-
dar 1 amendment..... 22-JAN-14

Read for the third time and passed as amended 12-FEB-14

Yeas 30
Nays 1
Abstaining 1

Patrick Harris
Secretary