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

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

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

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

This bill would provide further for the authority of the board and the grounds necessary to deny, revoke, or suspend a license, and would provide for disciplinary hearings, administrative fines, injunctions, and other penalties against violators.

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

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

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To amend Sections 34-14C-1, 34-14C-2, as amended by
27 Act 2010-148, 2010 Regular Session (Acts 2010, p. 215), 34-
28 14C-4, 34-14C-4.1, 34-14C-6, and 34-14C-8, Code of Alabama
29 1975, relating to the Home Medical Equipment Services

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

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 34-14C-1, 34-14C-2, as amended
19 by Act 2010-148, 2010 Regular Session (Acts 2010, p. 215), 34-
20 14C-4, 34-14C-4.1, 34-14C-6, and 34-14C-8 of the Code of
21 Alabama 1975, are amended to read as follows:

22 "§34-14C-1.

23 "As used in this chapter, the following terms shall
24 have the following meanings:

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

27 "(2) HOME MEDICAL EQUIPMENT. Medical devices usable
28 in a residential setting, as defined in regulations
29 established by the board.

1 "(3) HOME MEDICAL EQUIPMENT SERVICES. The delivery,
2 installation, maintenance, replacement of, or instruction in
3 the use of medical equipment and related supplies used by a
4 sick or disabled individual to allow that individual to obtain
5 care or treatment and be maintained in a residential setting.

6 "(4) HOME MEDICAL EQUIPMENT SERVICES PROVIDER. A
7 corporation, other business entity, or person engaged in the
8 business of providing home medical equipment services, either
9 directly or through a contractual arrangement, to an unrelated
10 sick or disabled individual in the residence of that
11 individual.

12 "§34-14C-2.

13 "(a) ~~Within 90 days of August 1, 2000, the~~ The
14 Governor shall appoint a minimum of nine persons to serve on
15 the Board of Home Medical Equipment Services Providers, such
16 persons to include a majority who are ~~representatives of the~~
17 employed in the home medical equipment ~~services~~ industry, and
18 at least one person from each of the following categories: A
19 consumer of home medical equipment services, a physician, a
20 representative from the acute-care hospital community, and a
21 representative from the home health agency community. Those
22 persons representing the ~~Home Medical Equipment Services~~
23 ~~Provider~~ home medical equipment industry shall be selected
24 from a list submitted by the Alabama Durable Medical Equipment
25 Association or its successor. Board members shall each be
26 citizens of this state and shall have no record of sanctions
27 related to fraud under federal or state law. The membership of
28 the board shall be inclusive and reflect the racial, gender,
29 geographic, urban/rural, and economic diversity of the state.

1 The board shall annually report to the Legislature by the
2 second legislative day of each regular session the extent to
3 which the board has complied with the diversity provisions
4 provided in this subsection.

5 "(b) The initial members appointed to the board
6 shall serve for terms of three to five years, with one-third
7 of the board being replaced each year, beginning in year four.
8 The terms may be renewed for successive three-year periods. An
9 appointment shall end on the anniversary date of the original
10 appointment and each member shall hold office until his or her
11 successor is appointed by the Governor.

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

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

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

28 "(f) At the request of the board, the Governor may
29 remove a member for failing to attend three consecutive and

1 properly noticed meetings. The Governor may also remove a
2 board member for any of the following reasons:

3 "(1) Misfeasance.

4 "(2) Malfeasance.

5 "(3) Neglect of duty.

6 "(4) Conviction of a felony.

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

8 "(g) The board may employ an administrator, who
9 shall be exempt from the classified service of the state and
10 shall serve at the pleasure of the board, and may employ
11 attorneys, experts, investigators, and other employees as
12 necessary to discharge duties of the board and administer this
13 chapter. The board shall determine the duties and fix the
14 compensation of the administrator and other employees, subject
15 to the general laws of the state.

16 "(h) The board shall adopt a seal, which shall be
17 affixed to all licenses issued by the board, and shall have
18 all other powers necessary and proper for performing official
19 duties.

20 "(i) The board may establish and charge reasonable
21 fees relating to the administration and enforcement of this
22 chapter including, but not limited to, application,
23 processing, Internet service, copying, mailing, filing, and
24 other fees as necessary to offset costs.

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

29 "§34-14C-4.

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

15 "(b) A license applicant shall submit the
16 application for licensing or renewal to the board on a form
17 promulgated and required by the board. In-state and out-of-
18 state applicants shall pay a reasonable nonrefundable fee
19 established by the board at the time the application is
20 submitted. The board ~~shall have the authority to~~ may set
21 reasonable fees for in-state and out-of-state applicants to
22 obtain a license. ~~The license~~ Upon satisfaction of all
23 applicable standards and requirements for licensure, the board
24 shall issue a license certificate permitting the licensee to
25 engage in providing home medical equipment services ~~shall be~~
26 ~~effective upon written notification from the board that the~~
27 ~~applicant meets the standards and has complied with all~~
28 ~~requirements for licensing.~~ The certificate shall be displayed
29 prominently at each licensed location. No person, partnership,

1 or corporation shall provide home medical equipment services
2 without first obtaining a license issued by the board pursuant
3 to this chapter.

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

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

19 "(e) Home medical equipment service providers who,
20 upon initial inspection, are found not to comply with
21 applicable licensing standards, may be issued a provisional
22 license valid for six months. The board shall advise the
23 provider of the areas of noncompliance contemporaneous with
24 the issuance of the provisional license, and shall reinspect
25 the provider for compliance between four and six months after
26 the provisional license is issued upon application and payment
27 of a reasonable reinspection fee established by the board of
28 up to one hundred fifty dollars (\$150).

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

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

9 "(h) Employees, contractors, or inspectors of the
10 board may conduct inspections of out-of-state facilities upon
11 application from out-of-state applicants for licensure and
12 renewal. Travel allowances, ~~as allowed by the Alabama State~~
13 ~~Ethics Commission~~ authorized by Sections 36-7-20 to 36-7-22,
14 inclusive, shall be provided by the out-of-state applicant for
15 all inspections conducted at the physical out-of-state
16 location.

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

22 "(j) The board shall adopt and maintain standards
23 for the individuals charged with conducting ~~the~~ inspections
24 for the purpose of determining compliance with the
25 requirements of this chapter. Board employees or contractors
26 may ~~be authorized to~~ conduct inspections. Out-of-state
27 inspections shall be limited to no more than two employees,
28 contractors, or inspectors of the board per visit.

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

7 "§34-14C-4.1.

8 "The Board of Home Medical Equipment ~~Services~~
9 ~~Providers~~ may establish by rule, and charge and collect,
10 reasonable inspection fees pursuant to the Alabama
11 Administrative Procedure Act.

12 "§34-14C-6.

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

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

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

26 "(d) A copy of the charges, including notice of the
27 time and place of hearing, shall be served by certified mail,
28 return receipt requested, at least 21 days before the
29 scheduled hearing date to the most recent address of the

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

9 "(e) The board may deny, suspend, or revoke a
10 license on any of the following grounds:

11 "(1) Conviction of a felony or other criminal
12 offense involving moral turpitude.

13 "(2) Violation of any ethical standard promulgated
14 by the board.

15 "(3) Fraud or misrepresentation in obtaining the
16 license.

17 "(4) Other just and sufficient cause as determined
18 by the board, including, but not limited to, any of the
19 following:

20 "a. Violation of any rule or standard of the board.

21 "b. Making a misleading, deceptive, false, or
22 fraudulent representation to a client.

23 "c. Engaging in business practices that are harmful
24 or detrimental to the public.

25 "d. Falsifying records.

26 "e. Failing to cooperate with an inspection or with
27 an investigation conducted by the board.

1 "f. Failing to report a change of name, address,
2 control, ownership, or administration to the board within 30
3 days after the date of change.

4 "(f) The board may informally resolve any alleged
5 violation of this chapter or rule or standard of the board by
6 stipulation, agreed settlement, or consent order.

7 "(g) Any ~~(a) An~~ entity or person found to be
8 providing home medical equipment services without a license as
9 required by this chapter shall be subject to an administrative
10 fine of up to one thousand dollars (\$1,000) per day that
11 services were provided without a license. Funds collected
12 pursuant to this chapter shall be allocated to the
13 administration of ~~the program~~ this chapter.

14 "(h) Any ~~(b) An~~ entity or person found to be
15 providing home medical equipment services without a license as
16 required by this chapter may be administratively enjoined by
17 the board from providing services until such time as the
18 entity or person complies with this chapter.

19 "(i) In addition to any other disciplinary action
20 authorized by this chapter, the board may levy and collect
21 administrative fines for violations of this chapter or the
22 rules or standards of the board in an amount of up to one
23 thousand dollars (\$1,000) for each violation.

24 "(j) Any person or entity violating this chapter,
25 upon conviction, shall be guilty of a Class A misdemeanor, and
26 subject to fine or imprisonment, or both.

27 "(k) Any ~~(e) An~~ entity or person subject to the
28 penalties prescribed by subsections ~~(a) and (b)~~ shall be

1 ~~entitled to~~ (g) and (h) may pursue an appeal through the board
2 according to ~~regulations~~ rules promulgated by the board.

3 "(l) ~~(d)~~ Any hearings related to matters before the
4 board shall be conducted in Montgomery County.

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

14 "(n) 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-8.

19 "The ~~home medical equipment services providers board~~
20 shall be subject to the Alabama Sunset Law, ~~Title 41, Chapter~~
21 ~~20,~~ as an enumerated agency as provided in Section 41-20-3,
22 and shall have a termination date of October 1, 2002, and
23 every four years thereafter, unless continued pursuant to the
24 Alabama Sunset Law."

25 Section 2. Although this bill would have as its
26 purpose or effect the requirement of a new or increased
27 expenditure of local funds, the bill is excluded from further
28 requirements and application under Amendment 621, now
29 appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the
2 bill defines a new crime or amends the definition of an
3 existing crime.

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