1 SB308

2 117108-1

3 By Senator Dixon

4 RFD: Health

5 First Read: 02-FEB-10

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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.

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 34-14C-1, 34-14C-2, 34-14C-4, 34-14C-4.1, 34-14C-6, 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 administrator and other necessary employees, adopt a seal, and establish and charge reasonable fees; 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; and to provide for administrative fines, injunctions, and other penalties against violators.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§34-14C-1.

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

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

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

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

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

"§34-14C-2.

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

~~Provider~~ home medical equipment industry shall be selected from a list submitted by the Alabama Durable Medical Equipment Association or its successor. Board members shall have no record of sanctions related to fraud under federal or state law. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

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

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

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

"(e) Any vacancy on the board ~~must~~ shall be filled by the Governor within 60 days. An appointment to fill a vacancy shall be for the duration of the unexpired term. If a vacancy occurs among those members who represent the home

medical equipment ~~services provider~~ industry, the appointment shall be made from a list submitted by the Alabama Durable Medical Equipment Association, or its successor.

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

"(1) Misfeasance.

"(2) Malfeasance.

"(3) Neglect of duty.

"(4) Conviction of a felony.

"(5) Permanent inability to perform official duties.

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

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

"(i) The board may establish and charge reasonable fees relating to the administration and enforcement of this chapter including, but not limited to, application,

processing, Internet service, copying, mailing, filing, and other fees as necessary to offset costs.

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

"§34-14C-4.

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

"(b) A license applicant shall submit the application for licensing or renewal to the board on a form promulgated and required by the board. In-state and out-of-state applicants shall pay a reasonable nonrefundable fee established by the board at the time the application is submitted. The board ~~shall have the authority to~~ may set

reasonable fees for in-state and out-of-state applicants to obtain a license. ~~The license~~ Upon satisfaction of all applicable standards and requirements for licensure, the board shall issue a license certificate permitting the licensee to engage in providing home medical equipment services ~~shall be effective upon written notification from the board that the applicant meets the standards and has complied with all requirements for licensing~~. The certificate shall be displayed prominently at each licensed location. No person, partnership, or corporation shall provide home medical equipment services without first obtaining a license issued by the board pursuant to this chapter.

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

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

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

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

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

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

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

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

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

"§34-14C-4.1.

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

"§34-14C-6.

"<u>(a) The board may deny, suspend, or revoke a license as provided in this section.</u>

1 "(b) A license may not be denied, suspended, or
2 revoked except by majority vote of the board and with prior
3 notice and opportunity for hearing in accordance with this
4 chapter and the Alabama Administrative Procedure Act.
5 "(c) The board may institute a hearing for denial,
6 suspension, or revocation of a license or any person may file
7 a complaint with the board seeking the denial, suspension, or
8 revocation of an application for licensure or license issued
9 by the board or the investigation of any person or entity
10 providing home medical equipment services. A complaint shall
11 be in a form prescribed by the board.
12 "(d) A copy of the charges, including notice of the
13 time and place of hearing, shall be served by certified mail,
14 return receipt requested, at least 21 days before the
15 scheduled hearing date to the most recent address of the
16 licensee on file with the board, or to the last known address
17 of any unlicensed person providing home medical services. If
18 the notice and opportunity for hearing is refused or the
19 return receipt has not been received by the board within 10
20 days before the scheduled hearing, the licensee may be served
21 by mailing the charges and notice by first-class mail, at
22 least seven days before the hearing date, to the most recent
23 address on file with the board.
24 "(e) The board may deny, suspend, or revoke a
25 license on any of the following grounds:
26 "(1) Conviction of a felony or other criminal
27 offense involving moral turpitude.

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

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

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

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

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

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

"d. Falsifying records.

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

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

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

"~~(a) An~~(g) Any entity or person found to be providing home medical equipment services without a license as required by this chapter shall be subject to an administrative fine of up to one thousand dollars ($1,000) per day that services were provided without a license. Funds collected

pursuant to this chapter shall be allocated to the administration of ~~the program~~ this chapter.

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

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

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

"~~(c) An~~ (k) Any entity or person subject to the penalties prescribed by subsections ~~(a) and (b) shall be entitled to~~ (g) and (h) may pursue an appeal through the board according to ~~regulations~~ rules promulgated by the board.

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

"(m) In addition to any other penalty or disciplinary action authorized by this chapter, the board may seek an injunction against any person or entity found in violation of this chapter. In an action for an injunction, the board may demand and recover a civil penalty of fifty dollars ($50) per day for each violation, reasonable attorney fees,

and court costs. No civil penalty shall be awarded to the board if an administrative fine is assessed pursuant to subsection (g).

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

"§34-14C-8.

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

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.