



Sub. H.B. 105

125th General Assembly
(As Passed by the General Assembly)

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Sen. Fedor

Effective date: September 16, 2004; certain provisions effective December 15, 2004, and September 16, 2005

ACT SUMMARY

- Requires the licensure or certification of home medical equipment services providers by the Ohio Respiratory Care Board.
- Increases the membership of the Ohio Respiratory Care Board from five to nine members by increasing, from three to five, the number of Board members who are respiratory care professionals and adding two home medical services providers.

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CONTENT AND OPERATION

Home medical equipment, services, and providers

(R.C. 4752.01 and 4752.02(A); Section 4)

The act regulates providers of home medical equipment services. "Home medical equipment," for the purposes of the act, is equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, is not useful to a person in the absence of illness or injury, is appropriate for use in the home and is one or more of the following: life-sustaining equipment prescribed by an authorized health care professional that mechanically sustains, restores, or supplants a vital bodily function, such as breathing; technologically sophisticated medical equipment prescribed by an authorized health care professional that requires individualized adjustment or regular maintenance by a home medical equipment services provider to maintain a patient's health care condition or the effectiveness of the equipment; or an item specified in rules adopted by the Ohio Respiratory Care Board.

"Home medical equipment services" refers to the sale, delivery, installation, maintenance, replacement, or demonstration of home medical equipment. A "home medical equipment services provider" is a person engaged in offering home medical equipment services to the public.

Beginning one year after the act's effective date, anyone who does not hold either a valid license to provide home medical equipment services or a valid certificate of registration issued by the Ohio Respiratory Care Board is prohibited from providing home medical equipment services or from publicly claiming to be a home medical equipment services provider unless the person is specifically excepted from this prohibition by the act.

The Ohio Respiratory Care Board

(R.C. 4761.02; Section 3)

Not later than 90 days after the act's effective date, the Governor is to appoint four additional members to the Ohio Respiratory Care Board. Two members must be home medical equipment services providers with no less than five years of management experience in home medical equipment services prior to appointment. The Ohio Association of Medical Equipment Services may submit

the names of nominees for these two Board positions to the Governor for consideration. The other two members appointed to the Board under the act must be respiratory care professionals who were engaged in or actively associated with the practice of respiratory care, in Ohio, for at least five years immediately preceding appointment. Of the four new members, one respiratory care professional appointee and one home medical services equipment provider appointee are to serve terms ending on March 14, immediately following the date that is one year after the act's effective date; the other respiratory care professional appointee and home medical services equipment provider appointee are to serve terms ending on March 14, immediately following the date that is two years after the act's effective date. Thereafter, terms are three years, each ending on the same day of the same month of the year as did the preceding term.

Home medical equipment licensure

(R.C. 4761.03)

The act requires the Ohio Respiratory Care Board to license and register home medical equipment services providers. Current law specifies that the Board must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The act specifies that the rules must include procedures for the issuance and renewal of licenses and limited permits, including the duties that may be fulfilled by the Board's executive director and other Board employees, and rules for administering and enforcing laws relating to the licensure and certification of home medical equipment services providers.

Who does not require licensure

(R.C. 4752.02)

The act specifies that the following individuals and entities are not required to be licensed:

(1) A health care practitioner who does not sell or rent home medical equipment;¹

¹ "Health care practitioner" includes all of the following professionals licensed under Ohio law: a dentist or dental hygienist; registered or licensed practical nurse; optometrist; optician; pharmacist; physician authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatry; physician assistant; certified practitioner of a limited branch of medicine; psychologist; chiropractor; hearing aid dealer or fitter; speech-language pathologist or audiologist; occupational therapist or occupational therapy assistant; physical therapist or physical therapy assistant;

(2) A hospital that provides home medical equipment services only as an integral part of patient care and does not provide the services through a separate entity that has its own Medicare or Medicaid provider number;

(3) A manufacturer or wholesale distributor of home medical equipment that does not sell directly to the public;

(4) A hospice care program that does not sell or rent home medical equipment;

(5) A nursing home, a residential care facility, a home for the aging, a county or district home, and the Ohio Veterans' Home;

(6) A home health agency that is certified under Medicare as a provider of home health services and that does not sell or rent home medical equipment;

(7) A licensed veterinarian;

(8) An individual licensed to practice orthotics, prosthetics, or pedorthics;

(9) A pharmacy that either does not sell or rent home medical equipment or receives total payments of less than \$10,000 per year from selling or renting home medical equipment;

(10) A home dialysis equipment provider regulated by federal law.

Procedure for licensure and license renewal

(R.C. 4752.03, 4752.04, 4752.05, and 4752.06)

A person seeking to provide home medical equipment or services as a home medical equipment services provider must do either of the following:

(1) Apply for a license with the Ohio Respiratory Care Board;

(2) Apply for a certificate of registration issued by the Ohio Respiratory Care Board on the basis of being accredited by the Joint Commission on Accreditation of Healthcare Organizations² or another national accrediting body recognized by the Board, as specified in rules adopted by the Board.

counselor, social worker, or registered social work assistant; dietitian; respiratory care professional; or emergency medical technician (R.C. 4769.01(C)).

² *The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), established in 1951, is an independent, not-for-profit organization that evaluates and*

A person intending to provide home medical equipment services from more than one facility must apply for a separate license or certificate of registration for each facility.

A person seeking a license to provide home medical equipment services must apply to the Board on a form prescribed and provided by the Board and pay an application fee established by the Board by rule. The applicant must specify the name and location of the facility from which services will be provided. The license is valid only for the facility named in the application.

The Board or the Board's executive director must issue a license to provide home medical equipment services to each applicant that meets either of the following requirements:

- (1) Meets the eligibility standards established by the Board by rule;
- (2) Is a licensed pharmacy that receives total payments of \$10,000 or more per year from selling or renting home medical equipment.

The Board may conduct a personal interview of an applicant, or of an applicant's representative, to determine the applicant's qualifications for licensure.

A home medical equipment services provider license is valid from the day it is issued until the 30th day of June that immediately follows the date that the license is issued. Thereafter, the license is valid only if it is renewed biennially on or before June 30 of the year in which it expires. To renew a license, a license holder must follow the Revised Code's standard renewal procedure and submit to the Board an application for renewal and a renewal fee specified by the Board in rules. Documentation satisfactory to the Board that the applicant for license renewal has met the continuing education requirements required by the Board must also accompany the application.

Provisional licenses

During the first year after the act's effective date, an applicant who does not meet either of the requirements for licensure is to be granted a provisional license if, for at least 12 months prior to the act's effective date, the applicant was engaged

accredits over 16,000 health care organizations and programs in the United States. JCAHO's accreditation standards address an organization's performance in functional areas including patient rights, patient treatment, and infection control. To earn and maintain accreditation, an organization must undergo an on-site survey by a JCAHO survey team at least once every three years. <http://www.jcaho.org/about+us/index.htm>, visited 05-06-04.



in the business of providing home medical equipment services. The provisional license expires one year following the date of issuance and cannot be renewed.

Requirements for license holders

(R.C. 4752.07)

Those licensed by the Board to provide home medical equipment services must do the following:

- (1) Maintain a physical facility and a medical equipment inventory;
- (2) Establish equipment management and personnel policies;
- (3) Provide life-sustaining home medical equipment and services 24 hours per day, 7 days per week;
- (4) Require persons in its employ or under its control who provide home medical equipment services to successfully complete continuing education programs in home medical equipment services that meet the standards adopted by the Board and maintain records on participation in those programs;
- (5) Maintain records on all individuals to whom it provides home medical equipment and services;
- (6) Maintain liability insurance, including coverage for professional and products liability;
- (7) Comply with all requirements established by Board rule that apply to persons licensed by the Board.

Investigations and inspections

(R.C. 4752.08)

Under the act, the Board may inspect the operations and facility, subpoena the records, and compel testimony of employees of any home medical equipment services provider licensed by the Board. Inspections must be conducted in accordance with rules adopted by the Board. The Board must employ investigators who, under the direction of the Board's executive director, investigate complaints and conduct inspections. When necessary to an investigation or inspection, investigators may review and audit records during normal business hours at the place of business of the person being inspected. The Board must send the provider a report of the results of an inspection. If the Board determines that the provider is not in compliance with any of the requirements for licensure, the

Board may direct the provider to attain compliance. Failure of the provider to comply with the directive is grounds for the Board to take disciplinary action. A provider that disputes the inspection results may file an appeal with the Board no later than 90 days after receiving the inspection report. The Board must review the inspection report and, at the request of the provider, conduct a new inspection.

The Board and its employees are prohibited from disclosing confidential information obtained during an investigation, except pursuant to a court order.

Home medical equipment certificate of registration

(R.C. 4752.11, 4752. 12, 4752.13, 4752.14, 4752.15, and 4752.17)

A person seeking a certificate of registration to provide home medical equipment services must apply to the Ohio Respiratory Care Board on a form prescribed and provided by the Board. The application must be accompanied by the registration fee established in rules adopted by the Board.

The applicant must specify in the application all of the following:

- (1) The name of the facility from which services will be provided;
- (2) The facility's address;
- (3) The facility's telephone number;
- (4) A person who may be contacted with regard to the facility;
- (5) The name of the national accrediting body that issued the accreditation on which the application is based;
- (6) The applicant's accreditation number and the expiration date of the accreditation;
- (7) A telephone number that may be used 24 hours a day, seven days a week, to obtain information related to the facility's provision of home medical equipment services.

The Board must issue a certificate of registration to provide home medical equipment services to each applicant who submits a complete application. An application is complete only if the Board finds that the applicant holds accreditation from the Joint Commission on Accreditation of Healthcare Organizations or another national accrediting body recognized by the Board, as specified in rules adopted by the Board.



A certificate of registration is valid from the day it is issued until the 30th day of June that immediately follows issuance. Thereafter, the certificate is valid only if it is renewed biennially on or before June 30 of the year in which it expires. A certificate of registration is valid only for the facility named in the application.

A certificate of registration must be renewed by the Board if the certificate holder is accredited by the Joint Commission on Accreditation of Healthcare Organizations or another national accrediting body recognized by the Board, as specified in rules adopted by the Board.

An application for renewal of a certificate of registration must be accompanied by the renewal fee established in rules adopted by the Board. Renewals must be made in accordance with the standard renewal procedure established under Revised Code Chapter 4745.

The Ohio Respiratory Care Board is required to enter into a cooperative agreement with each of the national accrediting bodies it recognizes in rules it adopts for purposes of issuing certificates of registration. The Board must ensure that each cooperative agreement establishes or specifies standards or procedures regarding a complaint process, patient safety and care, and any other matter the Board considers appropriate for home medical equipment services providers that receive certificates of registration.

In accordance with the Administrative Procedure Act, the Board must suspend or revoke a certificate of registration if it learns from any source that the accreditation on which the certificate of registration was issued has been revoked or suspended or is otherwise no longer valid.

If the status of the accreditation on which a certificate of registration is issued changes for any reason, the holder of the certificate must notify the Board. On receipt of the notice, the Board is required to suspend or revoke the certificate, if appropriate.

The Board is required to adopt rules in accordance with the Administrative Procedure Act to implement and administer the licensure and certification of home medical equipment services providers. The act specifies that prior to adopting any rule, the board must consult with representatives of any association of home medical equipment services providers that conduct business in Ohio. The rules must do all of the following:

- (1) Specify items considered to be home medical equipment;

(2) Establish procedures for issuance and renewal of licenses and certificates of registration, including the duties that may be fulfilled by the Board's executive director and other Board employees;

(3) Specify the national accrediting bodies the Board recognizes for purposes of issuing certificates of registration;

(4) Establish standards an applicant must meet to be eligible to be granted a license;

(5) Establish standards for personnel policies, equipment storage, equipment maintenance, and record keeping to be followed by licensed home medical equipment services providers;

(6) Establish standards for continuing education programs in home medical equipment services for individuals who provide home medical equipment services while employed by or under the control of a licensed home medical equipment services provider;

(7) Establish standards and procedures for inspection of licensed home medical equipment providers and the facilities from which their home medical equipment services are provided and for appeal of inspection results;

(8) Establish fees for issuing and renewing licenses in an amount sufficient to meet the expenses the Board incurs in administering the licensing program;

(9) Establish fees for conducting inspections of licensed home medical equipment services providers in an amount sufficient to meet the expenses the Board incurs in administering the inspection program;

(10) Establish fees for issuing and renewing certificates of registration in an amount sufficient to meet the expenses the Board incurs in administering the registration program;

(11) Establish any other standards, requirements, or procedures the Board considers necessary for the implementation or administration of the licensure and certification of home medical equipment services providers.

The Board is permitted to adopt rules specifying items that are considered home medical equipment.

Occupational Licensing and Regulatory Fund

(R.C. 4752.18)

All moneys the Ohio Respiratory Care Board receives from any source must be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund.

Civil action for providing equipment or services without a license or certificate

(R.C. 4752.19)

At the request of the Ohio Respiratory Care Board, the act permits the Attorney General to bring a civil action for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties, in the court of common pleas of the county in which a violation has occurred, is occurring, or is threatening to occur against any person who has violated, is violating, or threatens to violate the requirement that a person who provides home medical equipment or services or claims to the public to be a home medical equipment services provider be licensed or certified by the Board. In accordance with the Rules of Civil Procedure, the court of common pleas in which an action for injunction is filed has jurisdiction to grant, and must grant, a temporary restraining order and preliminary and permanent injunctive relief on a showing that the person against whom the action is brought has violated, is violating, or threatens to violate the requirement for licensure or certification. In an action for a civil penalty, the court is permitted to impose on a person found to have violated the licensure or certification requirement a civil penalty of not less than \$500 and not more than \$2,500 for each day of violation. Moneys resulting from such civil penalties must be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund.

The act specifies that these remedies are in addition to remedies otherwise available under any federal or state law or ordinance of a municipal corporation.

Criminal penalties

(R.C. 4752.99)

Anyone without a valid license who is found to be providing home medical equipment or services or publicly claiming to be a home medical equipment services provider is guilty of a minor misdemeanor on the first offense. On a second offense, the person is guilty of a fourth degree misdemeanor, and, on every subsequent offense, of a first degree misdemeanor.

Disciplinary actions

(R.C. 4752.09 and 4761.09; Section 4)

The act permits the Board to impose administrative sanctions against license holders in accordance with the Administrative Procedure Act. Specifically, the Board may (a) suspend or revoke a license or (b) discipline a license holder by imposing a fine of not more than \$5,000 or by taking other disciplinary action on any of the following grounds:

(1) Violation of any of the act's provisions or any order or rule of the Board applicable to licensees;

(2) A plea of guilty to or a judicial finding of guilt of a felony or a misdemeanor that involves dishonesty or is directly related to the provision of home medical equipment services;

(3) Making a material misstatement in furnishing information to the Board;

(4) Professional incompetence;

(5) Negligence or gross misconduct in providing home medical equipment services;

(6) Aiding, assisting, or willfully permitting another person to violate the act's provisions or an order or rule of the Board applicable to licensees;

(7) Failing to provide information in response to a written request by the Board within 60 days of receiving the request;

(8) Engaging in conduct likely to deceive, defraud, or harm the public;

(9) Denial, revocation, suspension, or restriction of a license to provide home medical equipment services, for any reason other than failure to renew, in another state or jurisdiction;

(10) Directly or indirectly giving to or receiving from any person a fee, commission, rebate, or other form of compensation for services not rendered;

(11) Knowingly making or filing false records, reports, or billings in the course of providing home medical equipment services, including false records, reports, or billings prepared for or submitted to state and federal agencies or departments;



(12) Failing to comply with federal rules issued pursuant to the Medicare program relating to operations, financial transactions, and general business practices of home medical equipment services providers.

Under current law, the Ohio Respiratory Care Board is permitted to refuse to issue or renew a license or a limited permit, issue a reprimand, suspend or permanently revoke a license or limited permit, or place a license or limited permit holder on probation on certain grounds specified in law. Current law requires a vote of not less than four Board members to suspend a license or limited permit without a prior hearing.

Since it increases the number of Board members, the act increases from four to seven the minimum votes of Board members required to suspend a license or limited permit without a prior hearing.

Summary suspensions

The Board immediately may suspend a license without a hearing if it determines that the license holder is subject to disciplinary action and there is clear and convincing evidence that continued operation by the license holder presents an immediate and serious harm to the public. The Board's president and executive director must make a preliminary determination and describe to the other members of the Board the evidence on which they made the determination. The description can be provided by telephone conference call or any other method of communication. If the president or executive director is unavailable or unable to act, the Board may by resolution designate another member or employee to act in place of the president or director, respectively. On review of the evidence, the Board may, by a vote of not less than seven of its members, suspend a license without a prior hearing. The act allows the Board to vote on the suspension by way of telephone conference call.

Immediately following a decision to suspend a license without a hearing, the Board must issue a written order of suspension to the license holder. The order is not subject to suspension by the court during the pendency of any appeal concerning it. If the license holder requests an adjudication hearing, the hearing must be held within seven to fifteen days after the license holder's request, unless the license holder and the Board agree on another date. Unless reversed by the Board, the suspension must remain in effect until the Board issues a final adjudication on the matter. The Board must issue its final adjudication no later than 90 days after completion of the hearing. If the Board fails to issue the order by that time, the summary suspension is terminated, but this does not affect the validity of any subsequent final adjudication order.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-03	pp. 205-206
Reported, H. Commerce & Labor	05-21-03	p. 499
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Reported, S. Health, Human Services, and Aging	05-26-04	p. 2008
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