



**Sub. H.B. 105**

125th General Assembly

(As Reported by H. Commerce & Labor)

**Reps. Collier, D. Evans, Hollister, McGregor, Raga, Schaffer, Redfern, Widener, Jerse, Webster, Allen, G. Smith**

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**BILL SUMMARY**

- Requires the licensure 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**

(secs. 4752.01, 4752.02, 4752.06(C); Section 4)

The bill regulates providers of home medical equipment services. "Home medical equipment," for the purposes of this bill, 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, and is appropriate for use in the home. Home medical equipment includes life-sustaining equipment prescribed by an authorized health care professional that mechanically sustains, restores, or supplants a vital bodily function, such as breathing and 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. The Ohio Respiratory Care Board, which is to regulate providers of home medical equipment, may by rule include other equipment as home medical equipment. "Home medical equipment services" refers to the sale, delivery, installation, maintenance, replacement, or demonstration of home medical equipment, and a "home medical services

provider" is a person engaged in providing home medical equipment services. One year after the effective date of the bill, anyone who does not hold a valid license to provide home medical equipment services 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 bill.

### **The Ohio Respiratory Care Board**

(sec. 4761.02; Section 3)

Not later than 90 days after the effective date of the bill, the Governor is required 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 bill 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 members appointed to the Board, one respiratory care professional appointee and one home medical services equipment provider appointee will serve a term ending on March 14, immediately following the date that is one year after the bill's effective date, and the other respiratory care professional appointee and one home medical services equipment provider appointee will serve a term ending on March 14, immediately following the date that is two years after the bill's effective date. Thereafter, the 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**

(secs. 4752.06 and 4761.03)

The bill requires the Ohio Respiratory Care Board to adopt rules in accordance with the Administrative Procedure Act (Revised Code Chapter 119.) to implement and administer the licensure of home medical equipment services providers. The bill also specifies that prior to adopting any rule, the Board must consult with representatives of any association of home medical equipment services providers that conducts business in Ohio. The rules must establish:

- (1) Standards an applicant must meet to be eligible to be granted a license;

(2) Standards for personnel policies, equipment storage and maintenance, and record keeping;

(3) Standards for continuing education programs in home medical equipment service for individuals who provide home medical equipment services while employed by or under the control of a home medical services provider;

(4) Standards and procedures for inspection of home medical equipment providers and facilities from which home medical equipment services are provided and for appeal of inspection results;

(5) Fees for initial license, license renewal, and inspections;

(6) Any other standards, requirements, or procedures that the Board considers necessary for implementation or administration of the licensing program.

The Board must also adopt rules specifying the accrediting bodies from which it will accept documentation of accreditation in issuing an initial home medical equipment services license and items in addition to those listed in the bill that the Board considers to be home medical equipment.

### **Who does not require licensure**

(sec. 4752.02)

The bill 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;<sup>1</sup>

(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;

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<sup>1</sup> "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; counselor, social worker, or registered social work assistant; dietitian; respiratory care professional; or emergency medical technician (R.C. 4769.01(C)).

(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 home;<sup>2</sup>

(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 under the Revised Code 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**

(secs. 4752.03, 4752.04, and 4752.05)

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 also specify the location of the facility from which services will be provided. The license is valid only for the facility named in the application. An applicant intending to provide home medical equipment services from more than one facility must obtain a separate license for each facility.

The Board must issue an initial license to provide home medical equipment services to each applicant that meets one of the following requirements:

(1) Meets the eligibility standards established by the Board by rule;

(2) Is a hospital that provides home medical equipment services through a separate entity that has its own Medicare or Medicaid provider number;

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<sup>2</sup> "Home" means a nursing home, residential care facility, home for the aging, and the Ohio veterans' home. "Home" also includes a county home or district home that is or has been licensed as a residential care facility (R.C. 3721.01).

(3) Is a pharmacy that receives total payments of \$10,000 or more per year from selling or renting home medical equipment services;

(4) Is an entity accredited by the Joint Commission on Accreditation of Healthcare Organizations;<sup>3</sup>

(5) Is accredited based on home health care standards by an accrediting body recognized by the Board in rules and provides documentation of its accreditation to the Board.

During the first year after the bill's effective date, an applicant who does not meet any of the requirements for licensure is to be granted a provisional license if, for at least 12 months prior to the bill's effective date, the applicant was engaged in the business of providing home medical equipment services.

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.

### **Requirements for license holders**

(sec. 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;

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<sup>3</sup> *The Joint Commission on Accreditation of Healthcare Organizations, established in 1951, is an independent, not-for-profit organization that evaluates and accredits nearly 18,000 health care organizations and programs in the United States in 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 every three years. < <http://www.jcaho.org/about+us/index.htm> >, visited 3-7-03.*

- (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.

**Investigations and inspections by the Board**

(sec. 4752.08)

Under the bill, the Board may inspect the operations and facility, subpoena the records, and compel testimony of employees of any home medical equipment services provider. 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, 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 requirement 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 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, unless pursuant to a court order.

## Disciplinary measures

(secs. 4752.09 and 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.

The Board may, on any of the following grounds (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:

- (1) Violation of any of the bill's provisions or any order or rule of the Board;
- (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 medical equipment;
- (3) Making a material misstatement in furnishing information to the Board;
- (4) Professional incompetence;
- (5) Negligence or gross misconduct in providing home medical equipment and services;
- (6) Aiding, assisting, or willfully permitting another person in violating the bill's provisions or an order or rule of the Board;
- (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 and 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.

The Board immediately may suspend a license without a hearing if the Board determines that there exists clear and convincing evidence that the 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 by which they made the determination. If the president or executive director is absent or unavailable to act, the Board may by resolution designate another member to act in place of the president or director. On review of the evidence, the Board may, by a vote of not less than five of its members suspend a license without a prior hearing. The bill allows the Board to vote on the suspension by way of telephone conference call.

Immediately following a decision to suspend a license, 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.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-03	p. 205
Reported, H. Commerce & Labor	05-21-03	p. 499

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