

By: Representative Ford

To: Public Health and
Welfare

HOUSE BILL NO. 543
(As Passed the House)

1 AN ACT TO AMEND SECTION 73-21-108, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISION AUTHORIZING
3 THE STATE BOARD OF PHARMACY TO PERMIT AND REGULATE PERSONS WHO
4 SUPPLY HOME MEDICAL EQUIPMENT; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. Section 73-21-108, Mississippi Code of 1972, is
7 amended as follows:

8 73-21-108. (1) **Definitions.**

9 For the purposes of this section:

10 (a) "Home medical equipment" means technologically
11 sophisticated medical equipment and devices usable in a home care
12 setting, including, but not limited to:

13 (i) Oxygen for human consumption, oxygen
14 concentrators and/or oxygen delivery systems and equipment;

15 (ii) Ventilators;

16 (iii) Respiratory disease management devices;

17 (iv) Electronic and computer driven wheelchairs
18 and seating systems;

19 (v) Apnea monitors;

20 (vi) Transcutaneous electrical nerve stimulator
21 (TENS) units;

22 (vii) Low air loss cutaneous pressure management
23 devices;

24 (viii) Sequential compression devices;

25 (ix) Neonatal home phototherapy devices;

26 (x) Feeding pumps; and

27 (xi) Other similar equipment as defined in

28 regulations adopted by the board.

29 The term "home medical equipment" does not include medical
30 equipment used in the normal course of treating patients by
31 hospitals, hospices, long-term care facilities or home health
32 agencies, or medical equipment used or dispensed by health care
33 professionals licensed by the State of Mississippi if the
34 professional is practicing within the scope of his or her
35 professional practice. In addition, the term does not include
36 items such as upper and lower extremity prosthetics, canes,
37 crutches, walkers, bathtub grab bars, standard wheelchairs,
38 commode chairs and bath benches.

39 (b) "Home medical equipment services" means the
40 delivery, installation, maintenance, replacement, and/or
41 instruction in the use of home medical equipment, used by a sick
42 or disabled individual, to allow the individual to be cared for
43 and maintained in a home or noninstitutional environment.

44 (c) "Medical gas" means those gases and liquid oxygen
45 intended for human consumption.

46 (d) "Order" means an order issued by a licensed
47 practitioner legally authorized to order home medical equipment
48 and/or medical gases.

49 (2) **Permit Required.**

50 (a) No person, business or entity located in this state
51 or outside of this state that is subject to this section shall
52 sell, rent or provide or offer to sell, rent or provide directly
53 to patients in this state any home medical equipment, legend
54 devices, and/or medical gas unless such person, business or entity
55 first obtains a Medical Equipment Supplier Permit from the board.

56 (b) The permitting requirements of this section apply
57 to all persons, companies, agencies and other business entities
58 that are in the business of supplying home medical equipment to
59 patients in their places of residence and that bill the patient or
60 the patient's insurance, Medicare, Medicaid or other third party

61 payor for the rent or sale of that equipment.

62 (c) The board shall require a separate permit for each
63 facility location directly or indirectly owned or operated in this
64 state.

65 (d) The application for a permit shall be made to the
66 board on a form supplied by the board and shall be accompanied by
67 a fee of not more than Three Hundred Dollars (\$300.00), as
68 prescribed by the board. Once issued, every permit must be
69 renewed annually, and the renewal fee shall be not more than One
70 Hundred Seventy-five Dollars (\$175.00), as prescribed by the
71 board.

72 (e) All permits issued under this section shall expire
73 annually on June 30 of each year. Applications for renewal must
74 be made to the board on or before June 30 and must be accompanied
75 by the fee as prescribed by the board. A late renewal fee of One
76 Hundred Dollars (\$100.00) shall be added to all renewal
77 applications received by the board after June 30 of each renewal
78 period. The permit shall become void if the renewal application,
79 renewal fee and the late renewal fee are not received by the board
80 by September 30 of each year.

81 (3) **Exemptions.**

82 (a) The permitting requirements of this section do not
83 apply to the following entities or practitioners unless they have
84 a separate business entity, company, corporation or division that
85 is in the business of providing home medical equipment for sale or
86 rent to patients at their places of residence:

- 87 (i) Home health agencies;
- 88 (ii) Hospitals;
- 89 (iii) Wholesalers and/or manufacturers;
- 90 (iv) Medical doctors, physical therapists,
91 respiratory therapists, occupational therapists, speech
92 pathologists, optometrists, chiropractors and podiatrists who use
93 home medical equipment and/or legend devices in their individual

94 practices;

95 (v) Pharmacies;

96 (vi) Hospice programs;

97 (vii) Nursing homes and/or long-term care

98 facilities;

99 (viii) Veterinarians; dentists; and emergency

100 medical services.

101 (b) Although community pharmacies are exempt from the
102 permitting requirements of this section, they shall be subject to
103 the same regulations that are applicable to permitted businesses
104 or entities for the sale or rental of home medical equipment
105 covered by this section.

106 (c) Nothing in this section shall prohibit trained
107 individuals from using oxygen, liquid oxygen and/or legend devices
108 in emergencies.

109 (d) Nothing in this section shall prohibit the
110 prehospital emergency administration of oxygen by licensed health
111 care providers, emergency medical technicians, first responders,
112 fire fighters, law enforcement officers and other emergency
113 personnel trained in the proper use of emergency oxygen.

114 (4) **Order Required.**

115 Home medical equipment suppliers shall not provide any home
116 medical equipment to a patient without a valid order from an
117 authorized licensed practitioner.

118 (5) **Regulations.**

119 The board shall adopt regulations for the distribution and
120 sale or rental of home medical equipment, legend devices and
121 medical gases that promote the public health and welfare and
122 comply with at least the minimum standards, terms and conditions
123 of federal laws and regulations. The regulations shall include,
124 without limitation:

125 (a) Minimum information from each home medical
126 equipment, legend device and medical gas supplier required for

127 permitting and renewal permits;

128 (b) Minimum qualifications of persons who engage in the
129 distribution of home medical equipment;

130 (c) Appropriate education, training or experience of
131 persons employed by home medical equipment suppliers;

132 (d) Minimum standards for storage of home medical
133 equipment;

134 (e) Minimum requirements for the establishment and
135 maintenance of all records for the sale, rental and servicing of
136 home medical equipment; and

137 (f) Minimum standards of operation and professional
138 conduct.

139 (6) **Medical Equipment Advisory Committee to the Board.**

140 (a) A Medical Equipment Advisory Committee (MEAC),
141 composed of three (3) members selected by the Mississippi
142 Association of Medical Equipment Suppliers and approved by the
143 board, shall review and make recommendations to the board
144 regarding all regulations dealing with home medical equipment,
145 legend devices and medical gases that are proposed by the board
146 and before they are adopted by the board.

147 (b) All MEAC members must have been actively involved
148 in the home medical equipment business for a minimum of five (5)
149 years before the selection to the committee and shall hold and
150 maintain, in good standing, a permit issued by the board under
151 this section.

152 (c) The MEAC members shall meet at least quarterly and
153 review all home medical equipment suppliers' inspection reports.
154 All complaints and reports of investigations of violations of law
155 or regulations regarding home medical equipment, legend devices
156 and medical gases shall first be reviewed by the MEAC. After
157 review, the MEAC may make recommendations to the board's
158 Investigations Review Committee regarding further administrative
159 action by the board.

160 (d) The MEAC shall keep and maintain minutes of all
161 meetings of the MEAC and shall provide copies of the minutes to
162 the board on a quarterly basis.

163 (7) **Revocation, Suspension or Restriction of Permit and**
164 **Penalties.**

165 (a) The board may revoke, suspend, restrict or refuse
166 to issue or renew a permit or impose a monetary penalty, in
167 accordance with Section 73-21-103 except that the monetary penalty
168 shall not exceed Ten Thousand Dollars (\$10,000.00) per violation,
169 if the business or holder of a permit or applicant for a permit
170 issued under this section has committed or is found guilty by the
171 board of any of the following:

172 (i) Violation of any federal, state or local law
173 or regulations relating to home medical equipment, legend devices
174 or medical gases.

175 (ii) Violation of any of the provisions of this
176 section or regulations adopted under this section.

177 (iii) Commission of an act or engaging in a course
178 of conduct that constitutes a clear and present danger to the
179 public health and safety.

180 (iv) Filing a claim or assisting in the filing of
181 a claim for reimbursement for home medical equipment or home
182 medical equipment services that were not provided or that were not
183 authorized to be provided.

184 (v) Failure to comply with any lawful order of the
185 board.

186 (b) Disciplinary action by the board against a business
187 or any person holding a permit under this section shall be in
188 accordance with Section 73-21-99.

189 (8) **Repealer.**

190 This section shall stand repealed on July 1, 2003.

191 SECTION 2. This act shall take effect and be in force from
192 and after July 1, 1999.