

By: Senator(s) Canon

To: Public Health and
Welfare

SENATE BILL NO. 2319
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 73-21-108, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE REPEALER ON THE STATUTE PRESCRIBING PERMIT
3 REQUIREMENTS FOR PERSONS PROVIDING HOME MEDICAL EQUIPMENT; AND FOR
4 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.** For the purposes of this
9 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.** (a) No person, business or entity
50 located in this state or outside of this state that is subject to
51 this section shall sell, rent or provide or offer to sell, rent or
52 provide directly to patients in this state any home medical
53 equipment, legend devices, and/or medical gas unless such person,
54 business or entity first obtains a Medical Equipment Supplier
55 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.** (a) The permitting requirements of this
82 section do not apply to the following entities or practitioners
83 unless they have a separate business entity, company, corporation
84 or division that is in the business of providing home medical
85 equipment for sale or rent to patients at their places of
86 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.** Home medical equipment suppliers shall
115 not provide any home medical equipment to a patient without a
116 valid order from an authorized licensed practitioner.

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

123 (a) Minimum information from each home medical
124 equipment, legend device and medical gas supplier required for
125 permitting and renewal permits;

126 (b) Minimum qualifications of persons who engage in the

127 distribution of home medical equipment;

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

130 (d) Minimum standards for storage of home medical
131 equipment;

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

135 (f) Minimum standards of operation and professional
136 conduct.

137 (6) **Medical Equipment Advisory Committee to the board.**

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

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

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

158 (d) The MEAC shall keep and maintain minutes of all
159 meetings of the MEAC and shall provide copies of the minutes to

the board on a quarterly basis.

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

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

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

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

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

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

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

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

(8) **Repealer.** This section shall stand repealed on July 1, 2001.

SECTION 2. This act shall take effect and be in force from and after June 30, 1999.