MISSISSIPPI LEGISLATURE THIRD EXTRAORDINARY SESSION 2002

By: Representative Read

To: Public Health and Welfare

HOUSE BILL NO. 10

AN ACT TO REENACT SECTION 73-21-108, MISSISSIPPI CODE OF 1972, WHICH REQUIRES ANY PERSON OR BUSINESS THAT SELLS HOME MEDICAL EQUIPMENT TO OBTAIN A MEDICAL EQUIPMENT SUPPLIER PERMIT FROM THE STATE BOARD OF PHARMACY, AND WHICH WAS REPEALED BY OPERATION OF LAW ON JULY 1, 2001; TO RATIFY THE ISSUANCE OF PERMITS UNDER SECTION 73-21-108 AND MEDICAID REIMBURSEMENT PAYMENTS MADE TO HOLDERS OF THOSE PERMITS DURING THE PERIOD FROM JULY 1, 2001, UNTIL THE EFFECTIVE DATE OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

73-21-108. (1) **Definitions.** For the purposes of this section:

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

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

(ii) Ventilators;

(iii) Respiratory disease management devices;

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

(v) Apnea monitors;

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

(vii) Low air loss cutaneous pressure management devices;

(viii) Sequential compression devices;

(ix) Neonatal home phototherapy devices;

(x) Feeding pumps; and

(xi) Other similar equipment as defined in regulations adopted by the board.

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

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

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

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

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

(b) The permitting requirements of this section apply to all persons, companies, agencies and other business entities that are in the business of supplying home medical equipment to

patients in their places of residence and that bill the patient or the patient's insurance, Medicare, Medicaid or other third party payor for the rent or sale of that equipment.

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

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

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

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

(i) Home health agencies;

(ii) Hospitals;

(iii) Wholesalers and/or manufacturers;

(iv) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech

pathologists, optometrists, chiropractors and podiatrists who use home medical equipment and/or legend devices in their individual practices;

(v) Pharmacies;

(vi) Hospice programs;

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

(viii) Veterinarians; dentists; and emergency medical services.

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

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

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

(4) **Order required.** Home medical equipment suppliers shall not provide any home medical equipment to a patient without a valid order from an authorized licensed practitioner.

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

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

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

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

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

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

(f) Minimum standards of operation and professional conduct.

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

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

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

(c) The MEAC members shall meet at least quarterly and review all home medical equipment suppliers' inspection reports. All complaints and reports of investigations of violations of law or regulations regarding home medical equipment, legend devices and medical gases shall first be reviewed by the MEAC. After review, the MEAC may make recommendations to the board's

Investigations Review Committee regarding further administrative action by the board.

(d) The MEAC shall keep and maintain minutes of all 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.

SECTION 2. (1) The issuance of any permits by the State Board of Pharmacy in accordance with the provisions of Section

73-21-108 as it existed on June 30, 2001, during the period from July 1, 2001, until the effective date of House Bill No. 10, Third Extraordinary Session of 2002, are ratified, approved and confirmed.

(2) Any reimbursement payments for durable medical equipment services or medical supplies made by the Division of Medicaid to holders of permits issued by the State Board of Pharmacy in accordance with the provisions of Section 73-21-108 as it existed on June 30, 2001, during the period from July 1, 2001, until the effective date of House Bill No. 10, Third Extraordinary Session of 2002, are ratified, approved and confirmed; however, this subsection does not prevent or restrict the Division of Medicaid from exercising any of the authority granted under Section 43-13-121 with respect to any of those reimbursement payments.

SECTION 3. This act shall take effect and be in force from and after its passage.