MISSISSIPPI LEGISLATURE REGULAR SESSION 2023

By: Representative Roberson

To: Judiciary B

HOUSE BILL NO. 884

AN ACT TO CREATE NEW SECTION 1-3-40, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "FIRST RESPONDER" AS IT IS USED IN ANY STATUTE FOR WHICH A DEFINITION OF THE TERM IS NOT PROVIDED; TO AMEND SECTIONS 41-137-41 AND 73-21-108, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 1-3-40, Mississippi Code of 1972:

1-3-40. The term "first responder," when used in any statute in which the term "first responder" is not defined either within the statute itself or in another statute that is specifically made applicable to the relevant statute, means law enforcement personnel, fire department personnel, emergency medical personnel, emergency management personnel, 911 telecommunicators or public safety dispatchers who provide emergency communication for an emergency response attack, and public works personnel who may respond rapidly or deploy to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, and emergencies.

SECTION 2. Section 41-137-41, Mississippi Code of 1972, is amended as follows:

41-137-41. (1) From and after February 2, 2022, the MDOH and MDOR shall each, where relevant to the role of that particular agency, establish and promulgate the following rules and regulations:

(a) Governing the manner in which it shall consider petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in Section 41-137-3, including public notice of and opportunities to comment in public hearings on the petitions;

(b) Establishing the form and content of license and renewal applications and written certifications submitted under this chapter;

(c) Governing the manner in which it shall consider applications for and renewals of registry identification cards, which may include creating a standardized written certification form;

(d) Governing medical cannabis establishments with the goals of ensuring the health and safety of registered qualifying patients and preventing diversion and theft of medical cannabis without imposing an undue burden or compromising the confidentiality of cardholders, including:

(i) Oversight requirements;

(ii) Recordkeeping requirements;

(iii) Qualifications that are directly and demonstrably related to the operation of medical cannabis establishments;

(iv) Security requirements, including lighting, physical security, and alarm requirements;

(v) Health and safety regulations, including restrictions on the use of pesticides, herbicides or other chemicals that are injurious to human health;

(vi) Standards for the processing of cannabis products and the indoor cultivation of cannabis by cannabis cultivation facilities;

(vii) Requirements for the transportation and storage of cannabis by medical cannabis establishments;

(viii) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent of the establishment;

(ix) Standards for the safe processing of medical cannabis products, including extracts and concentrates;

(x) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories, including phone books, listings in cannabis-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;

(xi) Requirements and procedures for the safe and accurate packaging and labeling of medical cannabis, including prohibiting the use of any images designed or likely to appeal to minors, such as cartoons, packaging that resembles popular candy brands, toys, animals or children, or any other likeness or image containing characters or phrases to advertise to minors;

(xii) Standards for cannabis testing facilities, including requirements for equipment and qualifications for personnel;

(xiii) Protocol development for the safe delivery of medical cannabis from dispensaries to cardholders;

(xiv) Reasonable requirements to ensure the applicant has sufficient property or capital to operate the applicant's proposed medical cannabis establishment;

(xv) Procedures for suspending or terminating the licenses or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of the provisions of this chapter or the rules and regulations promulgated pursuant to this section;

(xvi) Procedures for the selection, certification and oversight of a seed-to-sale tracking system as provided for in Section 41-137-11;

(xvii) Requirements for labeling medical cannabis and cannabis products, including requiring medical cannabis product labels to include the following:

1. The length of time it typically takes for the product to take effect;

2. Disclosure of ingredients and possible allergens;

3. A nutritional fact panel;

4. The amount of THC and CBD in the product;

5. A notice of the potential harm caused by consuming medical cannabis; and

6. For edible cannabis products, when practicable, a standard symbol indicating that the product contains cannabis;

(xviii) Procedures for the registration of nonresident cardholders, which must require the submission of:

1. A practitioner's statement confirming that the patient has a debilitating medical condition; and

2. Documentation demonstrating that the nonresident cardholder is allowed to possess medical cannabis or cannabis preparations in the jurisdiction where he or she resides;

(xix) The amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder can possess;

(xx) Reasonable application and renewal fees for registry identification cards and registration certificates, according to the following:

1. The fee schedule shall be set as follows:

a. The qualifying patient registry identification card application fee shall be Twenty-five Dollars ($25.00);

b. The designated caregiver registry identification card application fee shall be Twenty-five Dollars ($25.00);

c. The designated caregiver criminal background fee shall be Thirty-seven Dollars ($37.00);

d. The fee for a renewal or replacement of a card shall be Twenty-five Dollars ($25.00);

e. The fee for a card for a nonresident patient shall be Seventy-five Dollars ($75.00);

f. The qualifying patient registry identification card application fee for a Medicaid participant shall be Fifteen Dollars ($15.00) and the fee for a renewal of such card shall be Fifteen Dollars ($15.00); and

g. The application fee for a qualifying patient registry identification card for disabled veterans or disabled first responders, as defined in Section 1-3-40, shall be waived. A disabled veteran or first responder may prove their disability by providing written documentation from their practitioner attesting to their debilitating medical condition, documentation from the Social Security Disability Office, or documentation that attests the applicant is a one-hundred percent (100%) disabled veteran as determined by the U.S. Department of

Veteran Affairs and codified at 38 C.F.R., Section 3.340(a)(2013); and

2. The MDOH may accept donations from private sources to reduce the amount of the application and renewal fees;

(xxi) Any other rules and regulations necessary to implement and administer this chapter.

(2) The initial rules filed by the MDOH to implement the medical cannabis program in accordance with this chapter shall be effective immediately upon their filing.

SECTION 3. Section 73-21-108, Mississippi Code of 1972, is amended 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 (as defined in Section 1-3-40), firefighters, 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 4. This act shall take effect and be in force from and after July 1, 2023.