As Introduced

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

A B I L L

To amend sections 4745.01, 4761.02, and 4761.03 and to enact sections 4752.01 to 4752.09 and 4752.99 of the Revised Code to require licensure of home medical equipment services providers by the Ohio Respiratory Care Board.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4745.01, 4761.02, and 4761.03 be amended and sections 4752.01, 4752.02, 4752.03, 4752.04, 4752.05, 4752.06, 4752.07, 4752.08, 4752.09, and 4752.99 of the Revised Code be enacted to read as follows:

Sec. 4745.01. (A) "Standard renewal procedure," as used in Chapters 905., 907., 909., 911., 913., 915., 918., 921., 923., 927., 942., 943., 953., 1321., 3710., 3713., 3719., 3731., 3742., 3748., 3769., 3783., 3921., 3951., 4104., 4105., 4143., 4169., 4561., 4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 4727., 4728., 4729., 4731., 4733., 4734., 4735., 4739., 4741., 4747., 4749., <u>4752.,</u> 4753., 4755., 4757., 4758., 4759., 4761., 4766., 4773., and 4775. of the Revised Code, means the license renewal procedures specified in this chapter.

(B) "Licensing agency," as used in this chapter, means any

department, division, board, section of a board, or other state governmental unit subject to the standard renewal procedure, as defined in this section, and authorized by the Revised Code to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises.

(C) "License," as used in this chapter, means a license, certificate, permit, card, or other authority issued or conferred by a licensing agency by authority of which the licensee has or claims the privilege to engage in the profession, occupation, or occupational activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing agency has jurisdiction.

(D) "Licensee," as used in this chapter, means either the person to whom the license is issued or renewed by a licensing agency, or the person, partnership, or corporation at whose request the license is issued or renewed.

(E) "Renewal" and "renewed," as used in this chapter and in the chapters of the Revised Code specified in division (A) of this section, includes the continuing licensing procedure provided in Chapter 3748. of the Revised Code and rules adopted under it and in sections 1321.05 and 3921.33 of the Revised Code, and as applied to those continuing licenses any reference in this chapter to the date of expiration of any license shall be construed to mean the due date of the annual or other fee for the continuing license.

Sec. 4752.01. As used in this chapter:

(A) "Authorized health care professional" means a person authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery or otherwise authorized under Ohio law to prescribe the use of home

medical equipment by a patient.

(B) "Home medical equipment" means 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 all of the following:

(1) Life-sustaining equipment prescribed by an authorized health care professional that mechanically sustains, restores, or supplants a vital bodily function, such as breathing;

(2) 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;

(3) Any item specified by the board in rules adopted under division (C) of section 4752.06 of the Revised Code.

(C) "Home medical equipment services" means the sale, delivery, installation, maintenance, replacement, or instruction in the use of home medical equipment.

(D) "Home medical equipment services provider" means a person engaged in providing home medical equipment services.

(E) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(F) "Sell or rent" means to transfer ownership or the right to use property, whether in person or through an agent, employee, or other person, in return for compensation.

Sec. 4752.02. (A) Except as provided in division (B) of this section, no person who does not hold a valid license issued under this chapter shall provide home medical equipment or services or claim to the public to be a home medical equipment services provider.

(B) Division (A) of this section does not apply to any of the following:

(1) A health care practitioner, as defined in section 4769.01 of the Revised Code, who does not sell or rent home medical equipment;

(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;

(3) A manufacturer or wholesale distributor of home medical equipment that does not sell directly to the public;

(4) A hospice care program, as defined by section 3712.01 of the Revised Code, that does not sell or rent home medical equipment;

(5) A home, as defined by section 3721.01 of the Revised Code;

(6) A home health agency that is certified under Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as a provider of home health services and does not sell or rent home medical equipment;

(7) An individual who holds a current, valid license issued under Chapter 4741. of the Revised Code to practice veterinary medicine;

(8) An individual who holds a current, valid license issued

under Chapter 4779. of the Revised Code to practice orthotics, prosthetics, or pedorthics;

(9) A pharmacy licensed under Chapter 4729. of the Revised Code that either does not sell or rent home medical equipment or receives total payments of less than ten thousand dollars per year from selling or renting home medical equipment;

(10) A home dialysis equipment provider regulated by federal law.

Sec. 4752.03. A person seeking a license to provide home medical equipment services shall apply to the Ohio respiratory care board on a form the board shall prescribe and provide. The application must be accompanied by the license application fee established in rules adopted under section 4752.06 of the Revised Code and specify the location of the facility from which services will be provided.

Sec. 4752.04. (A) The respiratory care board shall issue a license to provide home medical equipment services to each applicant that meets one of the following requirements:

(1) Meets the standards established by the board in rules adopted under section 4752.06 of the Revised Code;

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

(3) Is a pharmacy licensed under Chapter 4729. of the Revised Code that receives total payments of ten thousand dollars or more per year from selling or renting home medical equipment;

(4) Is an entity accredited by the joint commission on accreditation of healthcare organizations;

(5) Is accredited based on home health care standards by an

accrediting body recognized by the board in rules adopted under section 4752.06 of the Revised Code and provides documentation of its accreditation to the board.

(B) During the period ending two years after the effective date of this section, an applicant that does not meet any of the requirements of division (A) of this section shall be granted an initial license if for at least twelve months prior to the effective date of this section the applicant was engaged in the business of providing home medical equipment services.

(C) The board may conduct a personal interview of an applicant, or an applicant's representative, to determine the applicant's qualifications for licensure.

(D) A license issued under this section is valid from the day it is issued and expires annually on the thirtieth day of June. A license may be renewed in accordance with section 4752.05 of the Revised Code.

(E) A license issued under this section is valid only for the facility named in the application. A person that intends to provide home medical equipment services from more than one facility must obtain a separate license for each facility.

Sec. 4752.05. A license issued under this chapter shall be renewed by the Ohio respiratory care board if the license holder is in compliance with the applicable requirements of this chapter.

An application for license renewal shall be accompanied by the renewal fee established in rules adopted under section 4752.06 of the Revised Code and documentation satisfactory to the board that the continuing education requirements of section 4752.07 of the Revised Code have been met. Renewals shall be made in accordance with the standard renewal procedure established under Chapter 4745. of the Revised Code.

Sec. 4752.06. (A) The Ohio respiratory care board shall adopt rules to implement and administer this chapter. The rules shall establish all of the following:

(1) Standards an applicant must meet to be eligible to be granted a license under section 4752.04 of the Revised Code;

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

(3) Standards for continuing education programs in home medical equipment services for individuals who provide home medical equipment services while employed by or under the control of a home medical equipment 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, license renewal, and inspections;

(6) Any other standards, requirements, or procedures the board considers necessary for the implementation or administration of this chapter.

(B) The board shall adopt rules that specify the following:

(1) The accrediting bodies it recognizes for the purposes of division (A)(5) of section 4752.04 of the Revised Code;

(2) Items considered home medical equipment for purposes of divisions (B)(1) and (2) of section 4752.01 of the Revised Code.

(C) The board may adopt rules specifying additional items that are considered home medical equipment for purposes of division (B) of section 4752.01 of the Revised Code.

(D) Rules shall be adopted under this chapter in accordance with Chapter 119. of the Revised Code. Prior to adopting any rule, the board shall consult with representatives of any association of home medical equipment services providers that do business in this state.

Sec. 4752.07. The holder of a license issued under this chapter shall do all of the following:

(A) Maintain a physical facility and a medical equipment inventory;

(B) Establish equipment management and personnel policies;

(C) Provide life-sustaining home medical equipment, as described in division (B)(1) of section 4752.01 of the Revised Code, and related home medical equipment services twenty-four hours per day, seven days per week;

(D) 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 established by rule adopted under section 4752.06 of the Revised Code and maintain records on participation in those programs;

(E) Maintain records on all individuals to whom it provides home medical equipment and services;

(F) Maintain liability insurance, including coverage for professional and products liability;

(G) Comply with all other requirements established by rule adopted under section 4752.06 of the Revised Code.

Sec. 4752.08. (A) The Ohio respiratory care board may inspect the operations and facility, subpoena the records, and compel testimony of employees of any home medical equipment services provider. Inspections shall be conducted as provided in rules adopted by the board under section 4752.06 of the Revised Code.

(B) The board shall employ investigators who shall, under the direction of the executive director of the board, investigate complaints and conduct inspections. Pursuant to an investigation or inspection, investigators may review and audit records during normal business hours at the place of business of the person being investigated. The board and its employees shall not disclose confidential information obtained during an investigation, except pursuant to a court order.

(C) The board shall 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 of this chapter, the board may direct the provider to attain compliance. Failure of the provider to comply with the directive is grounds for action by the board under division (A)(1) of section 4752.09 of the Revised Code.

(D) A provider that disputes the results of an inspection may file an appeal with the board not later than ninety days after receiving the report. The board shall review the inspection report and, at the request of the provider, conduct a new inspection.

Sec. 4752.09. (A) The Ohio respiratory care board may, in accordance with Chapter 119. of the Revised Code, suspend or revoke a license issued under this chapter or discipline a license holder by imposing a fine of not more than five thousand dollars or taking other disciplinary action on any of the following grounds:

(1) Violation of any provision of this chapter or an order or

rule of the board or failure to meet the standards established under division (A) of section 4752.06 of the Revised Code;

(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) Being guilty of negligence or gross misconduct in providing home medical equipment and services;

(6) Aiding, assisting, or willfully permitting another person to violate any provision of this chapter or an order or rule of the board;

(7) Failing, within sixty days, to provide information in response to a written request by the board;

(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 established under Title XVIII of the "Social

Security Act," 49 Stat. 620(1935), 42 U.S.C.A. 1395, as amended, relating to operations, financial transactions, and general business practices of home medical services providers.

(B) The respiratory care board may suspend a license without a hearing if it determines that there is evidence that the license holder is subject to actions under this section and that there is clear and convincing evidence that continued operation by the license holder presents an immediate and serious harm to the public. The president and executive director of the board shall make a preliminary determination and describe the evidence on which they made their determination to the other members of the board. The board may by resolution designate another board member to act in place of the president of the board or another employee to act in the place of the executive director, in the event that the board president or executive director is unavailable or unable to act. On consideration of the evidence, the board may by an affirmative vote of four members, not including the president of the board or the person named to act in place of the president, impose the summary suspension.

Immediately following the decision to suspend a license under this division, the board shall issue a written order of suspension and cause it to be delivered in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during the pendency of any appeal filed under section 119.12 of the Revised Code. If the license holder requests an adjudication hearing, the date set for the hearing shall be within fifteen days but not earlier than seven days after the license holder requests the hearing, unless another date is agreed to by the license holder and the board. The suspension shall remain in effect, unless reversed by the board, until a final adjudication order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue

its final adjudication order not later than ninety days after completion of the hearing. The board's failure to issue the order by that day shall cause the summary suspension to end, but shall not affect the validity of any subsequent final adjudication order.

Sec. 4752.99. Whoever violates division (A) of section 4752.02 of the Revised Code is guilty of a minor misdemeanor on the first offense. On the second offense, the person is guilty of a misdemeanor of the fourth degree. On each subsequent offense, the person is guilty of a misdemeanor of the first degree.

Sec. 4761.02. The governor, with the advice and consent of the senate, shall appoint the Ohio respiratory care board, consisting of ~~five~~ seven residents of this state. Three members of the board shall be respiratory care professionals who were engaged in or actively associated with the practice of respiratory care in this state for at least five years immediately preceding appointment. Two members shall be home medical equipment services providers with not less than five years of management experience in home medical equipment services prior to appointment. One member shall be a physician who has clinical training and experience in the management of pulmonary disease. One member shall represent the public.

After the term of a member of the board expires or becomes vacant, the Ohio state medical association may submit to the governor the names of nominees for the board position to be filled by a physician. The board of directors of the Ohio society for respiratory care, inc., may recommend to the governor at least three persons for each board position to be filled by a respiratory care professional. The American lung association of Ohio may submit to the governor the names of nominees for the

board position to be filled by a person representing the public. The Ohio association of medical equipment services may submit to the governor the names of nominees for the two board positions to be filled by home medical equipment services providers. The governor shall consider these nominees in making the appointments.

~~Terms~~ Of the initial two home medical equipment services providers appointed to the board, one shall be appointed for a term ending the fourteenth day of March immediately following the date that is one year after the effective date of this amendment and one for a term ending the fourteenth day of March immediately following the date that is two years after the effective date of this amendment. Thereafter, terms of office shall be for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. A member shall serve subsequent to the expiration of the member's term until ~~a~~ the member's successor is appointed and qualifies, or until a period of sixty days has elapsed, whichever occurs first. Each member, before entering upon the duties of office, shall subscribe to and file with the secretary of state the oath of office required under Section 7 of Article XV, Ohio Constitution. Vacancies shall be filled in the manner prescribed for the regular appointments to the board and shall be limited to the unexpired terms. Members of the board may be reappointed.

Annually, upon the qualification of the member or members appointed in that year, the Ohio respiratory care board shall organize and shall select from its members a president and secretary. A majority of the members of the board shall constitute a quorum to transact and vote on the business of the board.

Each member of the board shall receive an amount fixed pursuant to division (J) of section 124.15 of the Revised Code for each day actually employed in the discharge of the member's duties. In addition, each member shall receive actual and

necessary expenses incurred in the performance of the member's official duties.

The board shall employ an executive director who shall be in the unclassified service of the state. The executive director shall assist the board in the administration and enforcement of this chapter and shall employ individuals as the board considers necessary to provide that assistance.

Sec. 4761.03. The Ohio respiratory care board shall regulate the practice of respiratory care in this state and the persons to whom the board issues licenses and limited permits <u>and shall license home medical equipment services providers under Chapter 4752. of the Revised Code</u> under this chapter. Rules adopted under this chapter that deal with the provision of respiratory care in a hospital, other than rules regulating the issuance of licenses or limited permits, shall be consistent with the conditions for participation under medicare, Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended, and with the respiratory care accreditation standards of the joint commission on accreditation of healthcare organizations or the American osteopathic association.

The board shall:

(A) Adopt, and may rescind or amend, rules in accordance with Chapter 119. of the Revised Code to carry out the purposes of this chapter, including rules prescribing:

(1) The form and manner for filing applications for licensure and renewal, limited permits, and limited permit extensions under sections 4761.05 and 4761.06 of the Revised Code;

(2) The form, scoring, and scheduling of examinations and reexaminations for licensure and license renewal;

(3) Standards for the approval of educational programs

required to qualify for licensure and continuing education programs required for license renewal;

(4) Continuing education courses and the number of hour requirements necessary for license renewal, in accordance with section 4761.06 of the Revised Code;

(5) Procedures for the issuance and renewal of licenses and limited permits;

(6) Procedures for the denial, suspension, permanent revocation, refusal to renew, and reinstatement of licenses and limited permits, the conduct of hearings, and the imposition of fines for engaging in conduct that is grounds for such action and hearings under section 4761.09 of the Revised Code;

(7) Standards of ethical conduct for the practice of respiratory care;

(8) Conditions under which the license renewal fee and continuing education requirements may be waived at the request of a licensee who is not in active practice;

(9) The respiratory care tasks that may be performed by an individual practicing as a polysomnographic technologist pursuant to division (B)(3) of section 4761.10 of the Revised Code;

(10) Procedures for registering out-of-state respiratory care providers authorized to practice in this state under division (A)(4) of section 4761.11 of the Revised Code.

(B) Determine the sufficiency of an applicant's qualifications for admission to the licensing examination or a reexamination, and for the issuance or renewal of a license or limited permit;

(C) Determine the respiratory care educational programs that are acceptable for fulfilling the requirements of division (A) of section 4761.04 of the Revised Code;

(D) Schedule, administer, and score the licensing examination or any reexamination for license renewal or reinstatement. The board shall administer the licensing examinations at least twice a year and notify applicants of the time and place of the examinations.

(E) Investigate complaints concerning alleged violations of section 4761.10 of the Revised Code or grounds for the suspension, permanent revocation, or refusal to issue licenses or limited permits under section 3123.47 or 4761.09 of the Revised Code. The board shall employ investigators who shall, under the direction of the executive director of the board, investigate complaints and make inspections and other inquiries as, in the judgment of the board, are appropriate to enforce sections 3123.41 to 3123.50, 4761.09, and 4761.10 of the Revised Code. Pursuant to an investigation and inspection, the investigators may review and audit records during normal business hours at the place of business of a licensee or person who is the subject of a complaint filed with the board or at any place where the records are kept.

Except when required by court order, the board and its employees shall not disclose confidential information obtained during an investigation or identifying information about any person who files a complaint with the board.

The board may hear testimony in matters relating to the duties imposed upon it and issue subpoenas pursuant to an investigation. The president and secretary of the board may administer oaths.

(F) Conduct hearings, keep records of its proceedings, and do all such other things as are necessary and proper to carry out and enforce the provisions of this chapter;

(G) Maintain, publish, and make available upon request, for a fee not to exceed the actual cost of printing and mailing:

(1) The requirements for the issuance of licenses and limited permits under this chapter and rules adopted by the board;

(2) A current register of every person licensed to practice respiratory care in this state, to include the addresses of the person's last known place of business and residence, the effective date and identification number of the license, the name and location of the institution that granted the person's degree or certificate of completion of respiratory care educational requirements, and the date the degree or certificate was issued;

(3) A list of the names and locations of the institutions that each year granted degrees or certificates of completion in respiratory care;

(4) After the administration of each examination, a list of persons who passed the examination.

(H) Submit to the governor and to the general assembly each year a report of all of its official actions during the preceding year, together with any findings and recommendations with regard to the improvement of the profession of respiratory care;

(I) Administer and enforce Chapter 4752. of the Revised Code.

Section 2. That existing sections 4745.01, 4761.02, and 4761.03 of the Revised Code are hereby repealed.