

**As Reported by the Senate Health, Human Services and Aging  
Committee**

**125th General Assembly  
Regular Session  
2003-2004**

**Sub. H. B. No. 105**

**Representatives Collier, D. Evans, Hollister, McGregor, Raga, Schaffer,  
Redfern, Widener, Jerse, Webster, Allen, G. Smith, Aslanides, Barrett, Book,  
Carano, Carmichael, Cirelli, Daniels, DeWine, Domenick, Flowers, Jolivette,  
Key, Miller, Otterman, T. Patton, Perry, Peterson, Price, Schlichter, Setzer,  
Sferra, Strahorn, Wilson, Wolpert, Yates**

---

**A B I L L**

To amend sections 4745.01, 4761.02, 4761.03, and 1  
4761.09 and to enact sections 4752.01 to 4752.09, 2  
4752.11 to 4752.15, 4752.17 to 4752.19, and 3  
4752.99 of the Revised Code to require home 4  
medical equipment services providers to be 5  
licensed by the Ohio Respiratory Care Board or to 6  
be nationally accredited and registered by the 7  
Board. 8

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

**Section 1.** That sections 4745.01, 4761.02, 4761.03, and 9  
4761.09 be amended and sections 4752.01, 4752.02, 4752.03, 10  
4752.04, 4752.05, 4752.06, 4752.07, 4752.08, 4752.09, 4752.11, 11  
4752.12, 4752.13, 4752.14, 4752.15, 4752.17, 4752.18, 4752.19, and 12  
4752.99 of the Revised Code be enacted to read as follows: 13

**Sec. 4745.01.** (A) "Standard renewal procedure," as used in 14  
Chapters 905., 907., 909., 911., 913., 915., 918., 921., 923., 15

927., 942., 943., 953., 1321., 3710., 3713., 3719., 3731., 3742., 16  
3748., 3769., 3783., 3921., 3951., 4104., 4105., 4143., 4169., 17  
4561., 4703., 4707., 4709., 4713., 4715., 4717., 4723., 4725., 18  
4727., 4728., 4729., 4731., 4733., 4734., 4735., 4739., 4741., 19  
4747., 4749., 4752., 4753., 4755., 4757., 4758., 4759., 4761., 20  
4766., 4773., and 4775. of the Revised Code, means the license 21  
renewal procedures specified in this chapter. 22

(B) "Licensing agency," as used in this chapter, means any 23  
department, division, board, section of a board, or other state 24  
governmental unit subject to the standard renewal procedure, as 25  
defined in this section, and authorized by the Revised Code to 26  
issue a license to engage in a specific profession, occupation, or 27  
occupational activity, or to have charge of and operate certain 28  
specified equipment, machinery, or premises. 29

(C) "License," as used in this chapter, means a license, 30  
certificate, permit, card, or other authority issued or conferred 31  
by a licensing agency by authority of which the licensee has or 32  
claims the privilege to engage in the profession, occupation, or 33  
occupational activity, or to have control of and operate certain 34  
specific equipment, machinery, or premises, over which the 35  
licensing agency has jurisdiction. 36

(D) "Licensee," as used in this chapter, means either the 37  
person to whom the license is issued or renewed by a licensing 38  
agency, or the person, partnership, or corporation at whose 39  
request the license is issued or renewed. 40

(E) "Renewal" and "renewed," as used in this chapter and in 41  
the chapters of the Revised Code specified in division (A) of this 42  
section, includes the continuing licensing procedure provided in 43  
Chapter 3748. of the Revised Code and rules adopted under it and 44  
in sections 1321.05 and 3921.33 of the Revised Code, and as 45  
applied to those continuing licenses any reference in this chapter 46

to the date of expiration of any license shall be construed to 47  
mean the due date of the annual or other fee for the continuing 48  
license. 49

Sec. 4752.01. As used in this chapter: 50

(A) "Authorized health care professional" means a person 51  
authorized under Chapter 4731. of the Revised Code to practice 52  
medicine and surgery or osteopathic medicine and surgery or 53  
otherwise authorized under Ohio law to prescribe the use of home 54  
medical equipment by a patient. 55

(B) "Home medical equipment" means equipment that can stand 56  
repeated use, is primarily and customarily used to serve a medical 57  
purpose, is not useful to a person in the absence of illness or 58  
injury, is appropriate for use in the home, and is one or more of 59  
the following: 60

(1) Life-sustaining equipment prescribed by an authorized 61  
health care professional that mechanically sustains, restores, or 62  
supplants a vital bodily function, such as breathing; 63

(2) Technologically sophisticated medical equipment 64  
prescribed by an authorized health care professional that requires 65  
individualized adjustment or regular maintenance by a home medical 66  
equipment services provider to maintain a patient's health care 67  
condition or the effectiveness of the equipment; 68

(3) An item specified by the Ohio respiratory care board in 69  
rules adopted under division (B) of section 4752.17 of the Revised 70  
Code. 71

(C) "Home medical equipment services" means the sale, 72  
delivery, installation, maintenance, replacement, or demonstration 73  
of home medical equipment. 74

(D) "Home medical equipment services provider" means a person 75  
engaged in offering home medical equipment services to the public. 76

(E) "Hospital" has the same meaning as in section 3727.01 of 77  
the Revised Code. 78

(F) "Sell or rent" means to transfer ownership or the right 79  
to use property, whether in person or through an agent, employee, 80  
or other person, in return for compensation. 81

**Sec. 4752.02.** (A) Except as provided in division (B) of this 82  
section, no person shall provide home medical equipment services 83  
or claim to the public to be a home medical equipment services 84  
provider unless either of the following is the case: 85

(1) The person holds a valid license issued under this 86  
chapter; 87

(2) The person holds a valid certificate of registration 88  
issued under this chapter. 89

(B) Division (A) of this section does not apply to any of the 90  
following: 91

(1) A health care practitioner, as defined in section 4769.01 92  
of the Revised Code, who does not sell or rent home medical 93  
equipment; 94

(2) A hospital that provides home medical equipment services 95  
only as an integral part of patient care and does not provide the 96  
services through a separate entity that has its own medicare or 97  
medicaid provider number; 98

(3) A manufacturer or wholesale distributor of home medical 99  
equipment that does not sell directly to the public; 100

(4) A hospice care program, as defined by section 3712.01 of 101  
the Revised Code, that does not sell or rent home medical 102  
equipment; 103

(5) A home, as defined by section 3721.01 of the Revised 104  
Code; 105

(6) A home health agency that is certified under Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C. 1395, as a provider of home health services and does not sell or rent home medical equipment; 106  
107  
108  
109

(7) An individual who holds a current, valid license issued under Chapter 4741. of the Revised Code to practice veterinary medicine; 110  
111  
112

(8) An individual who holds a current, valid license issued under Chapter 4779. of the Revised Code to practice orthotics, prosthetics, or pedorthics; 113  
114  
115

(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; 116  
117  
118  
119

(10) A home dialysis equipment provider regulated by federal law. 120  
121

**Sec. 4752.03.** (A) A person seeking to comply with division (A) of section 4752.02 of the Revised Code shall do either of the following: 122  
123  
124

(1) Apply for a license issued under this chapter; 125

(2) Apply for a certificate of registration issued under this chapter on the basis of being accredited by the joint commission on accreditation of healthcare organizations or another national accrediting body recognized by the Ohio respiratory care board, as specified in rules adopted under section 4752.17 of the Revised Code. 126  
127  
128  
129  
130  
131

(B) A person intending to provide home medical equipment services from more than one facility shall apply for a separate license or certificate of registration for each facility. 132  
133  
134

Sec. 4752.04. 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 4752.17 of the Revised Code and specify the name and location of the facility from which services will be provided. 135  
136  
137  
138  
139  
140  
141

Sec. 4752.05. (A) The Ohio respiratory care board shall issue a license to provide home medical equipment services to each applicant under section 4752.04 of the Revised Code that meets either of the following requirements: 142  
143  
144  
145

(1) Meets the standards established by the board in rules adopted under section 4752.17 of the Revised Code; 146  
147

(2) 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. 148  
149  
150

(B) During the period ending one year after the effective date of this section, an applicant that does not meet either of the requirements of division (A) of this section shall be granted a provisional 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. The provisional license expires one year following the date on which it is issued and is not subject to renewal under section 4752.06 of the Revised Code. 151  
152  
153  
154  
155  
156  
157  
158  
159

(C) The board may conduct a personal interview of an applicant, or an applicant's representative, to determine the applicant's qualifications for licensure. 160  
161  
162

(D) A license issued under division (A) of this section is valid from the day it is issued until the thirtieth day of June 163  
164

that immediately follows the date of issue. Thereafter a license 165  
is valid only if it is renewed in accordance with section 4752.06 166  
of the Revised Code biennially on or before the thirtieth day of 167  
June. 168

(E) Any license issued under this section is valid only for 169  
the facility named in the application. 170

**Sec. 4752.06.** Except for a provisional license issued under 171  
section 4752.05 of the Revised Code, a license issued under this 172  
chapter shall be renewed by the Ohio respiratory care board if the 173  
license holder is in compliance with the applicable requirements 174  
of this chapter. 175

An application for license renewal shall be accompanied by 176  
the renewal fee established in rules adopted under section 4752.17 177  
of the Revised Code and documentation satisfactory to the board 178  
that the continuing education requirements of section 4752.07 of 179  
the Revised Code have been met. Renewals shall be made in 180  
accordance with the standard renewal procedure established under 181  
Chapter 4745. of the Revised Code. 182

**Sec. 4752.07.** The holder of a license issued under this 183  
chapter shall do all of the following: 184

(A) Maintain a physical facility and a medical equipment 185  
inventory; 186

(B) Establish equipment management and personnel policies; 187

(C) Provide life-sustaining home medical equipment, as 188  
described in division (B)(1) of section 4752.01 of the Revised 189  
Code, and related home medical equipment services twenty-four 190  
hours per day, seven days per week; 191

(D) Require persons in its employ or under its control who 192  
provide home medical equipment services to successfully complete 193

continuing education programs in home medical equipment services 194  
that meet the standards established by rule adopted under section 195  
4752.17 of the Revised Code and maintain records on participation 196  
in those programs; 197

(E) Maintain records on all individuals to whom it provides 198  
home medical equipment and services; 199

(F) Maintain liability insurance, including coverage for 200  
professional and products liability; 201

(G) Comply with all other requirements established by rule 202  
adopted under section 4752.17 of the Revised Code that apply to 203  
persons licensed under this chapter. 204

**Sec. 4752.08.** (A) The Ohio respiratory care board may inspect 205  
the operations and facility, subpoena the records, and compel 206  
testimony of employees of any home medical equipment services 207  
provider licensed under this chapter. Inspections shall be 208  
conducted as provided in rules adopted by the board under section 209  
4752.17 of the Revised Code. 210

(B) The board shall employ investigators who shall, under the 211  
direction of the executive director of the board, investigate 212  
complaints and conduct inspections. Pursuant to an investigation 213  
or inspection, investigators may review and audit records during 214  
normal business hours at the place of business of the person being 215  
investigated. The board and its employees shall not disclose 216  
confidential information obtained during an investigation, except 217  
pursuant to a court order. 218

(C) The board shall send the provider a report of the results 219  
of an inspection. If the board determines that the provider is not 220  
in compliance with any requirement of this chapter applicable to 221  
providers licensed under this chapter, the board may direct the 222  
provider to attain compliance. Failure of the provider to comply 223



with the directive is grounds for action by the board under 224  
division (A)(1) of section 4752.09 of the Revised Code. 225

(D) A provider that disputes the results of an inspection may 226  
file an appeal with the board not later than ninety days after 227  
receiving the inspection report. The board shall review the 228  
inspection report and, at the request of the provider, conduct a 229  
new inspection. 230

**Sec. 4752.09.** (A) The Ohio respiratory care board may, in 231  
accordance with Chapter 119. of the Revised Code, suspend or 232  
revoke a license issued under this chapter or discipline a license 233  
holder by imposing a fine of not more than five thousand dollars 234  
or taking other disciplinary action on any of the following 235  
grounds: 236

(1) Violation of any provision of this chapter or an order or 237  
rule of the board, as those provisions, orders, or rules are 238  
applicable to persons licensed under this chapter; 239

(2) A plea of guilty to or a judicial finding of guilt of a 240  
felony or a misdemeanor that involves dishonesty or is directly 241  
related to the provision of home medical equipment services; 242

(3) Making a material misstatement in furnishing information 243  
to the board; 244

(4) Professional incompetence; 245

(5) Being guilty of negligence or gross misconduct in 246  
providing home medical equipment services; 247

(6) Aiding, assisting, or willfully permitting another person 248  
to violate any provision of this chapter or an order or rule of 249  
the board, as those provisions, orders, or rules are applicable to 250  
persons licensed under this chapter; 251

(7) Failing, within sixty days, to provide information in 252

<u>response to a written request by the board;</u>	253
<u>(8) Engaging in conduct likely to deceive, defraud, or harm the public;</u>	254
<u>(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;</u>	256
<u>(10) Directly or indirectly giving to or receiving from any person a fee, commission, rebate, or other form of compensation for services not rendered;</u>	259
<u>(11) Knowingly making or filing false records, reports, or billings in the course of providing home medical equipment services, including false records, reports, or billings prepared for or submitted to state and federal agencies or departments;</u>	262
<u>(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. 1395, as amended, relating to operations, financial transactions, and general business practices of home medical services providers.</u>	266
<u>(B) The respiratory care board immediately 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, by telephone conference or any other method of communication, 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</u>	271

unavailable or unable to act. On review of the evidence, the board 284  
may by a vote of not less than seven of its members, suspend a 285  
license without a prior hearing. The board may vote on the 286  
suspension by way of a telephone conference call. 287

Immediately following the decision to suspend a license under 288  
this division, the board shall issue a written order of suspension 289  
and cause it to be delivered in accordance with section 119.07 of 290  
the Revised Code. The order shall not be subject to suspension by 291  
the court during the pendency of any appeal filed under section 292  
119.12 of the Revised Code. If the license holder requests an 293  
adjudication hearing, the date set for the hearing shall be within 294  
fifteen days but not earlier than seven days after the license 295  
holder requests the hearing, unless another date is agreed to by 296  
the license holder and the board. The suspension shall remain in 297  
effect, unless reversed by the board, until a final adjudication 298  
order issued by the board pursuant to this section and Chapter 299  
119. of the Revised Code becomes effective. The board shall issue 300  
its final adjudication order not later than ninety days after 301  
completion of the hearing. The board's failure to issue the order 302  
by that day shall cause the summary suspension to end, but shall 303  
not affect the validity of any subsequent final adjudication 304  
order. 305

**Sec. 4752.11.** (A) A person seeking a certificate of 306  
registration to provide home medical equipment services shall 307  
apply to the Ohio respiratory care board on a form the board shall 308  
prescribe and provide. The application must be accompanied by the 309  
registration fee established in rules adopted under section 310  
4752.17 of the Revised Code. 311

(B) The applicant shall specify in the application all of the 312  
following: 313

(1) The name of the facility from which services will be 314

<u>provided;</u>	315
<u>(2) The facility's address;</u>	316
<u>(3) The facility's telephone number;</u>	317
<u>(4) A person who may be contacted with regard to the facility;</u>	318 319
<u>(5) The name of the national accrediting body that issued the accreditation on which the application is based;</u>	320 321
<u>(6) The applicant's accreditation number and the expiration date of the accreditation;</u>	322 323
<u>(7) A telephone number that may be used twenty-four hours a day, seven days a week, to obtain information related to the facility's provision of home medical equipment services.</u>	324 325 326
<u>Sec. 4752.12. (A) The Ohio respiratory care board shall issue a certificate of registration to provide home medical equipment services to each applicant who submits a complete application under section 4752.11 of the Revised Code. For purposes of this division, an application is complete only if the board finds that the applicant holds accreditation from the joint commission on accreditation of healthcare organizations or another national accrediting body recognized by the board, as specified in rules adopted under section 4752.17 of the Revised Code.</u>	327 328 329 330 331 332 333 334 335
<u>(B) A certificate of registration issued under this section is valid from the day it is issued until the thirtieth day of June that immediately follows the date of issue. Thereafter, a certificate of registration is valid only if it is renewed in accordance with section 4752.13 of the Revised Code biennially on or before the thirtieth day of June.</u>	336 337 338 339 340 341
<u>(C) A certificate of registration issued under this section is valid only for the facility named in the application.</u>	342 343

Sec. 4752.13. A certificate of registration issued under this 344  
chapter shall be renewed by the Ohio respiratory care board if the 345  
certificate holder is accredited by the joint commission on 346  
accreditation of healthcare organizations or another national 347  
accrediting body recognized by the board, as specified in rules 348  
adopted under section 4752.17 of the Revised Code. 349

An application for renewal of a certificate of registration 350  
shall be accompanied by the renewal fee established in rules 351  
adopted under section 4752.17 of the Revised Code. Renewals shall 352  
be made in accordance with the standard renewal procedure 353  
established under Chapter 4745. of the Revised Code. 354

Sec. 4752.14. The Ohio respiratory care board shall enter 355  
into a cooperative agreement with each of the national accrediting 356  
bodies it recognizes in rules adopted under section 4752.17 of the 357  
Revised Code for purposes of issuing certificates of registration 358  
under this chapter. The board shall ensure that each cooperative 359  
agreement establishes or specifies standards or procedures 360  
regarding a complaint process, patient safety and care, and any 361  
other matter the board considers appropriate for home medical 362  
equipment services providers that receive certificates of 363  
registration under this chapter. 364

Sec. 4752.15. (A) The Ohio respiratory care board shall, in 365  
accordance with Chapter 119. of the Revised Code, suspend or 366  
revoke a certificate of registration issued under this chapter if 367  
it learns from any source that the accreditation on which the 368  
certificate of registration was issued has been revoked or 369  
suspended or is otherwise no longer valid. 370

(B) If the status of the accreditation on which a certificate 371  
of registration is issued under this chapter changes for any 372  
reason, the holder of the certificate shall notify the board. On 373

receipt of the notice, the board shall take action under division 374  
(A) of this section, if appropriate. 375

Sec. 4752.17. (A) The Ohio respiratory care board shall adopt 376  
rules to implement and administer this chapter. The rules shall do 377  
all of the following: 378

(1) Specify items considered to be home medical equipment for 379  
purposes of divisions (B)(1) and (2) of section 4752.01 of the 380  
Revised Code; 381

(2) Establish procedures for issuance and renewal of licenses 382  
and certificates of registration under this chapter, including the 383  
duties that may be fulfilled by the board's executive director and 384  
other board employees; 385

(3) Specify the national accrediting bodies the board 386  
recognizes for purposes of issuing certificates of registration 387  
under this chapter; 388

(4) Establish standards an applicant must meet to be eligible 389  
to be granted a license under section 4752.05 of the Revised Code; 390

(5) Establish standards for personnel policies, equipment 391  
storage, equipment maintenance, and record keeping to be followed 392  
by home medical equipment services providers licensed under this 393  
chapter; 394

(6) Establish standards for continuing education programs in 395  
home medical equipment services for individuals who provide home 396  
medical equipment services while employed by or under the control 397  
of a home medical equipment services provider licensed under this 398  
chapter; 399

(7) Establish standards and procedures for inspection of home 400  
medical equipment providers licensed under this chapter and the 401  
facilities from which their home medical equipment services are 402  
provided and for appeal of inspection results; 403

(8) Establish fees for issuing and renewing licenses under this chapter, in an amount sufficient to meet the expenses the board incurs in administering the licensing program; 404  
405  
406

(9) Establish fees for conducting inspections of home medical equipment services providers licensed under this chapter, in an amount sufficient to meet the expenses the board incurs in administering the inspection program; 407  
408  
409  
410

(10) Establish fees for issuing and renewing certificates of registration under this chapter, in an amount sufficient to meet the expenses the board incurs in administering the registration program; 411  
412  
413  
414

(11) Establish any other standards, requirements, or procedures the board considers necessary for the implementation or administration of this chapter. 415  
416  
417

(B) The board may adopt rules specifying items that are considered home medical equipment for purposes of division (B)(3) of section 4752.01 of the Revised Code. 418  
419  
420

(C) 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. 421  
422  
423  
424  
425

**Sec. 4752.18.** All moneys the Ohio respiratory care board receives under this chapter, from any source, shall be deposited into the state treasury to the credit of the occupational licensing and regulatory fund created under section 4743.05 of the Revised Code. 426  
427  
428  
429  
430

**Sec. 4752.19.** (A) At the request of the Ohio respiratory care board, the attorney general may bring a civil action for 431  
432

appropriate relief, including a temporary restraining order, 433  
preliminary or permanent injunction, and civil penalties, in the 434  
court of common pleas of the county in which a violation has 435  
occurred, is occurring, or is threatening to occur against any 436  
person who has violated, is violating, or threatens to violate 437  
section 4752.02 of the Revised Code. In accordance with the Rules 438  
of Civil Procedure, the court of common pleas in which an action 439  
for injunction is filed has jurisdiction to grant, and shall 440  
grant, a temporary restraining order and preliminary and permanent 441  
injunctive relief upon a showing that the person against whom the 442  
action is brought has violated, is violating, or threatens to 443  
violate section 4752.02 of the Revised Code. In an action for a 444  
civil penalty, the court may impose upon a person found to have 445  
violated section 4752.02 of the Revised Code a civil penalty of 446  
not less than five hundred and not more than two thousand five 447  
hundred dollars for each day of violation. Moneys resulting from 448  
civil penalties imposed under this section shall be deposited into 449  
the state treasury to the credit of the occupational licensing and 450  
regulatory fund created under section 4743.05 of the Revised Code. 451

(B) The remedies provided in this section are in addition to 452  
remedies otherwise available under any federal or state law or 453  
ordinance of a municipal corporation. 454

**Sec. 4752.99.** Whoever violates division (A) of section 455  
4752.02 of the Revised Code is guilty of a minor misdemeanor on 456  
the first offense. On the second offense, the person is guilty of 457  
a misdemeanor of the fourth degree. On each subsequent offense, 458  
the person is guilty of a misdemeanor of the first degree. 459

**Sec. 4761.02.** The governor, with the advice and consent of 460  
the senate, shall appoint the Ohio respiratory care board, 461  
consisting of ~~five~~ nine residents of this state. ~~Three~~ Five 462



members of the board shall be respiratory care professionals who 463  
were engaged in or actively associated with the practice of 464  
respiratory care in this state for at least five years immediately 465  
preceding appointment. Two members shall be home medical equipment 466  
services providers with not less than five years of management 467  
experience in home medical equipment services prior to 468  
appointment. One member shall be a physician who has clinical 469  
training and experience in the management of pulmonary disease. 470  
One member shall represent the public. 471

After the term of a member of the board expires or becomes 472  
vacant, the Ohio state medical association may submit to the 473  
governor the names of nominees for the board position to be filled 474  
by a physician. The board of directors of the Ohio society for 475  
respiratory care, inc., may recommend to the governor at least 476  
three persons for each board position to be filled by a 477  
respiratory care professional. The American lung association of 478  
Ohio may submit to the governor the names of nominees for the 479  
board position to be filled by a person representing the public. 480  
The Ohio association of medical equipment services may submit to 481  
the governor the names of nominees for the two board positions to 482  
be filled by home medical equipment services providers. The 483  
governor shall consider these nominees in making the appointments. 484

~~Terms~~ Of the two additional members of the board to be 485  
appointed who are respiratory care professionals who were engaged 486  
in or actively associated with the practice of respiratory care in 487  
this state for at least five years immediately preceding 488  
appointment, one shall be appointed for a term ending the 489  
fourteenth day of March immediately following the date that is one 490  
year after the effective date of this amendment and one for a term 491  
ending on the fourteenth day of March immediately following the 492  
date that is two years after the effective date of this amendment. 493  
Of the initial two home medical equipment services providers 494

appointed to the board, one shall be appointed for a term ending 495  
the fourteenth day of March immediately following the date that is 496  
one year after the effective date of this amendment and one for a 497  
term ending the fourteenth day of March immediately following the 498  
date that is two years after the effective date of this amendment. 499  
Thereafter, terms of office shall be for three years, each term 500  
ending on the same day of the same month of the year as did the 501  
term which it succeeds. A member shall serve subsequent to the 502  
expiration of the member's term until a the member's successor is 503  
appointed and qualifies, or until a period of sixty days has 504  
elapsed, whichever occurs first. Each member, before entering upon 505  
the duties of office, shall subscribe to and file with the 506  
secretary of state the oath of office required under Section 7 of 507  
Article XV, Ohio Constitution. Vacancies shall be filled in the 508  
manner prescribed for the regular appointments to the board and 509  
shall be limited to the unexpired terms. Members of the board may 510  
be reappointed. 511

Annually, upon the qualification of the member or members 512  
appointed in that year, the Ohio respiratory care board shall 513  
organize and shall select from its members a president and 514  
secretary. A majority of the members of the board shall constitute 515  
a quorum to transact and vote on the business of the board. 516

Each member of the board shall receive an amount fixed 517  
pursuant to division (J) of section 124.15 of the Revised Code for 518  
each day actually employed in the discharge of the member's 519  
duties. In addition, each member shall receive actual and 520  
necessary expenses incurred in the performance of the member's 521  
official duties. 522

The board shall employ an executive director who shall be in 523  
the unclassified service of the state. The executive director 524  
shall assist the board in the administration and enforcement of 525  
this chapter and shall employ individuals as the board considers 526

necessary to provide that assistance. 527

**Sec. 4761.03.** The Ohio respiratory care board shall regulate 528  
the practice of respiratory care in this state and the persons to 529  
whom the board issues licenses and limited permits and shall 530  
license and register home medical equipment services providers 531  
under Chapter 4752. of the Revised Code under this chapter. Rules 532  
adopted under this chapter that deal with the provision of 533  
respiratory care in a hospital, other than rules regulating the 534  
issuance of licenses or limited permits, shall be consistent with 535  
the conditions for participation under medicare, Title XVIII of 536  
the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, 537  
as amended, and with the respiratory care accreditation standards 538  
of the joint commission on accreditation of healthcare 539  
organizations or the American osteopathic association. 540

The board shall: 541

(A) Adopt, and may rescind or amend, rules in accordance with 542  
Chapter 119. of the Revised Code to carry out the purposes of this 543  
chapter, including rules prescribing: 544

(1) The form and manner for filing applications for licensure 545  
and renewal, limited permits, and limited permit extensions under 546  
sections 4761.05 and 4761.06 of the Revised Code; 547

(2) The form, scoring, and scheduling of examinations and 548  
reexaminations for licensure and license renewal; 549

(3) Standards for the approval of educational programs 550  
required to qualify for licensure and continuing education 551  
programs required for license renewal; 552

(4) Continuing education courses and the number of hour 553  
requirements necessary for license renewal, in accordance with 554  
section 4761.06 of the Revised Code; 555

(5) Procedures for the issuance and renewal of licenses and 556

limited permits, including the duties that may be fulfilled by the 557  
board's executive director and other board employees; 558

(6) Procedures for the denial, suspension, permanent 559  
revocation, refusal to renew, and reinstatement of licenses and 560  
limited permits, the conduct of hearings, and the imposition of 561  
fines for engaging in conduct that is grounds for such action and 562  
hearings under section 4761.09 of the Revised Code; 563

(7) Standards of ethical conduct for the practice of 564  
respiratory care; 565

(8) Conditions under which the license renewal fee and 566  
continuing education requirements may be waived at the request of 567  
a licensee who is not in active practice; 568

(9) The respiratory care tasks that may be performed by an 569  
individual practicing as a polysomnographic technologist pursuant 570  
to division (B)(3) of section 4761.10 of the Revised Code; 571

(10) Procedures for registering out-of-state respiratory care 572  
providers authorized to practice in this state under division 573  
(A)(4) of section 4761.11 of the Revised Code. 574

(B) Determine the sufficiency of an applicant's 575  
qualifications for admission to the licensing examination or a 576  
reexamination, and for the issuance or renewal of a license or 577  
limited permit; 578

(C) Determine the respiratory care educational programs that 579  
are acceptable for fulfilling the requirements of division (A) of 580  
section 4761.04 of the Revised Code; 581

(D) Schedule, administer, and score the licensing examination 582  
or any reexamination for license renewal or reinstatement. The 583  
board shall administer the licensing examinations at least twice a 584  
year and notify applicants of the time and place of the 585  
examinations. 586

(E) Investigate complaints concerning alleged violations of 587  
section 4761.10 of the Revised Code or grounds for the suspension, 588  
permanent revocation, or refusal to issue licenses or limited 589  
permits under section 3123.47 or 4761.09 of the Revised Code. The 590  
board shall employ investigators who shall, under the direction of 591  
the executive director of the board, investigate complaints and 592  
make inspections and other inquiries as, in the judgment of the 593  
board, are appropriate to enforce sections 3123.41 to 3123.50, 594  
4761.09, and 4761.10 of the Revised Code. Pursuant to an 595  
investigation and inspection, the investigators may review and 596  
audit records during normal business hours at the place of 597  
business of a licensee or person who is the subject of a complaint 598  
filed with the board or at any place where the records are kept. 599

Except when required by court order, the board and its 600  
employees shall not disclose confidential information obtained 601  
during an investigation or identifying information about any 602  
person who files a complaint with the board. 603

The board may hear testimony in matters relating to the 604  
duties imposed upon it and issue subpoenas pursuant to an 605  
investigation. The president and secretary of the board may 606  
administer oaths. 607

(F) Conduct hearings, keep records of its proceedings, and do 608  
all such other things as are necessary and proper to carry out and 609  
enforce the provisions of this chapter; 610

(G) Maintain, publish, and make available upon request, for a 611  
fee not to exceed the actual cost of printing and mailing: 612

(1) The requirements for the issuance of licenses and limited 613  
permits under this chapter and rules adopted by the board; 614

(2) A current register of every person licensed to practice 615  
respiratory care in this state, to include the addresses of the 616  
person's last known place of business and residence, the effective 617

date and identification number of the license, the name and 618  
location of the institution that granted the person's degree or 619  
certificate of completion of respiratory care educational 620  
requirements, and the date the degree or certificate was issued; 621

(3) A list of the names and locations of the institutions 622  
that each year granted degrees or certificates of completion in 623  
respiratory care; 624

(4) After the administration of each examination, a list of 625  
persons who passed the examination. 626

(H) Submit to the governor and to the general assembly each 627  
year a report of all of its official actions during the preceding 628  
year, together with any findings and recommendations with regard 629  
to the improvement of the profession of respiratory care; 630

(I) Administer and enforce Chapter 4752. of the Revised Code. 631

**Sec. 4761.09.** (A) The Ohio respiratory care board may refuse 632  
to issue or renew a license or a limited permit, may issue a 633  
reprimand, may suspend or permanently revoke a license or limited 634  
permit, or may place a license or limited permit holder on 635  
probation, on any of the following grounds: 636

(1) A plea of guilty to, a judicial finding of guilt of, or a 637  
judicial finding of eligibility for intervention in lieu of 638  
conviction for an offense involving moral turpitude or of a 639  
felony, in which case a certified copy of the court record shall 640  
be conclusive evidence of the matter; 641

(2) Violating any provision of this chapter or an order or 642  
rule of the board; 643

(3) Assisting another person in that person's violation of 644  
any provision of this chapter or an order or rule of the board; 645

(4) Obtaining a license or limited permit by means of fraud, 646  
false or misleading representation, or concealment of material 647

facts or making any other material misrepresentation to the board;	648
(5) Being guilty of negligence or gross misconduct in the practice of respiratory care;	649 650
(6) Violating the standards of ethical conduct adopted by the board, in the practice of respiratory care;	651 652
(7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;	653 654 655
(8) Using any dangerous drug, as defined in section 4729.01 of the Revised Code, or alcohol to the extent that the use impairs the ability to practice respiratory care at an acceptable level of competency;	656 657 658 659
(9) Practicing respiratory care while mentally incompetent;	660
(10) Accepting commissions, rebates, or other forms of remuneration for patient referrals;	661 662
(11) Practicing in an area of respiratory care for which the person is clearly untrained or incompetent or practicing in a manner that conflicts with section 4761.17 of the Revised Code;	663 664 665
(12) Employing, directing, or supervising a person who is not authorized to practice respiratory care under this chapter in the performance of respiratory care procedures;	666 667 668
(13) Misrepresenting educational attainments or authorized functions for the purpose of obtaining some benefit related to the practice of respiratory care;	669 670 671
(14) Assisting suicide as defined in section 3795.01 of the Revised Code.	672 673
Before the board may take any action under this section, other than issuance of a summary suspension order under division (C) of this section, the executive director of the board shall prepare and file written charges with the board. Disciplinary	674 675 676 677

actions taken by the board under this section shall be taken 678  
pursuant to an adjudication under Chapter 119. of the Revised 679  
Code, except that in lieu of an adjudication, the board may enter 680  
into a consent agreement to resolve an allegation of a violation 681  
of this chapter or any rule adopted under it. A consent agreement, 682  
when ratified by the board, shall constitute the findings and 683  
order of the board with respect to the matter addressed in the 684  
agreement. If the board refuses to ratify a consent agreement, the 685  
admissions and findings contained in the consent agreement shall 686  
be of no effect. 687

(B) If the board orders a license or limited permit holder 688  
placed on probation, the order shall be accompanied by a written 689  
statement of the conditions under which the person may be restored 690  
to practice. 691

The person may reapply to the board for original issuance of 692  
a license after one year following the date the license was 693  
denied. 694

A person may apply to the board for the reinstatement of a 695  
license or limited permit after one year following the date of 696  
suspension or refusal to renew. The board may accept or refuse the 697  
application for reinstatement and may require that the applicant 698  
pass a reexamination as a condition of eligibility for 699  
reinstatement. 700

(C) If the president and secretary of the board determine 701  
that there is clear and convincing evidence that a license or 702  
limited permit holder has committed an act that is grounds for 703  
board action under division (A) of this section and that continued 704  
practice by the license or permit holder presents a danger of 705  
immediate and serious harm to the public, the president and 706  
secretary may recommend that the board suspend the license or 707  
limited permit without a prior hearing. The president and 708  
secretary shall submit in writing to the board the allegations 709



causing them to recommend the suspension. 710

On review of the allegations, the board, by a vote of not 711  
less than ~~four~~ seven of its members, may suspend a license or 712  
limited permit without a prior hearing. The board may review the 713  
allegations and vote on the suspension by a telephone conference 714  
call. 715

If the board votes to suspend a license or limited permit 716  
under this division, the board shall issue a written order of 717  
summary suspension to the license or limited permit holder in 718  
accordance with section 119.07 of the Revised Code. If the license 719  
or limited permit holder requests a hearing by the board, the 720  
board shall conduct the hearing in accordance with Chapter 119. of 721  
the Revised Code. Notwithstanding section 119.12 of the Revised 722  
Code, a court of common pleas shall not grant a suspension of the 723  
board's order of summary suspension pending determination of an 724  
appeal filed under that section. 725

Any order of summary suspension issued under this division 726  
shall remain in effect until a final adjudication order issued by 727  
the board pursuant to division (A) of this section becomes 728  
effective. The board shall issue its final adjudication order 729  
regarding an order of summary suspension issued under this 730  
division not later than sixty days after completion of its 731  
hearing. Failure to issue the order within sixty days shall result 732  
in immediate dissolution of the suspension order, but shall not 733  
invalidate any subsequent, final adjudication order. 734

**Section 2.** That existing sections 4745.01, 4761.02, 4761.03, 735  
and 4761.09 of the Revised Code are hereby repealed. 736

**Section 3.** Not later than ninety days after the effective 737  
date of this act, the Governor with the advice and consent of the 738  
Senate shall make the additional appointments to the Ohio 739

Respiratory Care Board under section 4761.02 of the Revised Code, 740  
as amended by this act. 741

**Section 4.** Section 4752.02 of the Revised Code shall take 742  
effect one year after the effective date of this act. Section 743  
4761.09 of the Revised Code shall take effect ninety days after 744  
the effective date of this act. 745