

APA-1  
07/04

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control No. \_\_\_\_\_ Department or Agency The Board of Home Medical Equipment

Rule No. ~~473-X-6-01~~

Rule Title: Denial, Revocation, Suspension

\_\_\_\_\_ New X Amend \_\_\_\_\_ Repeal \_\_\_\_\_ Adopt by Reference \_\_\_\_\_

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

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Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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**Certification of Authorized Official**

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Brandy L. Benham  
Date 4-23-14

APA-2  
07/04

**Board of Home Medical Equipment**  
**NOTICE OF INTENDED ACTION**

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**AGENCY NAME:**

Board of Home Medical Equipment

**RULE NO. & TITLE:**

473-X-6-.01 Denial, Revocation, Suspension

**INTENDED ACTION:**

To amend Rules and Regulations.

**SUBSTANCE OF PROPOSED ACTION:**

The Board of Home Medical Equipment proposes to adopt an Administrative Code or Rules and Regulations under which to operate.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:**

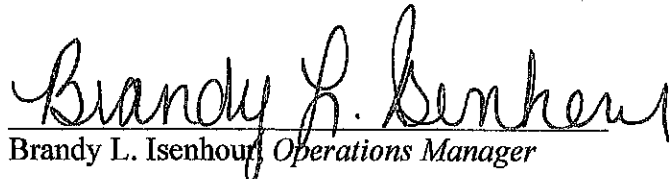
Written comments, views, or arguments will be received by the Board of Home Medical Equipment until 4:30 p.m. on July 3, 2014. Comments should be directed to Paula McCaleb, Executive Director, at Post Office Box 240636, Montgomery, AL 36124-0636, or via fax at 334-215-3457.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**

July 3, 2014

**CONTACT PERSON AT AGENCY:**

Brandy L. Isenhour  
334.215.3474

  
Brandy L. Isenhour, Operations Manager

**473-X-6-.01. Denial, Revocation, Suspension.**

(1) A license may not be denied, suspended, or revoked except by majority vote of the Board and with prior notice and opportunity for hearing, in accordance with Code of Ala. 1975, Sections 34-14C-1, et seq., and the Alabama Administrative Procedure Act.

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(2) The Board may institute a hearing for denial, suspension, or revocation of a license or any person may file a written complaint with the Board seeking the denial, suspension, or revocation of an application for licensure or license issued by the Board or the investigation of any unlicensed person or entity providing home medical equipment services. Complaints shall be in a form prescribed by the Board and shall be verified under oath by the complainant. If the Board determines that the complaint is substantive and relevant, it may inspect the operations of the provider to determine compliance with the Board's rules and regulations. Upon receipt of the inspection report, the Board may dismiss the complaint or send a notice of non-compliance to the licensee, which may be appealed through the Board in accordance with the procedures set forth in Rule 473-X-7-.01.

(3) A copy of the charges, including notice of the time and place of hearing, will be served by certified mail, return receipt requested, at least twenty-one (21) days before the scheduled hearing date to the most recent address of the applicant or licensee on file with the Board, or to the last known address of any unlicensed person or entity providing home medical equipment services. If the notice and opportunity for hearing is refused or the return receipt has not been received by the Board within ten (10) days before the scheduled hearing, the applicant, licensee, or unlicensed person or entity may be served by mailing the charges and notice by first class mail, at least seven (7) days before the hearing date, to the most recent address on file with the Board, or to the last known address of the unlicensed person or entity providing home medical equipment services.

(4) Any hearings related to matters before the Board shall be conducted in Montgomery County, Alabama.

(5) The Board may invoke disciplinary action as outlined in paragraph (6) below, including the denial or suspension of an application for an initial or renewal license, whenever it is established to the satisfaction of the Board, after a hearing held in accordance with Code of Ala. 1975, Sections 34-14C-1, et seq., and the Alabama Administrative Procedure Act, that a person is guilty of any of the following acts:

(a) \_\_\_\_\_ Violation of any provision of the Board's licensure act or any rule or regulation of the Board.

(b) Making a material misrepresentation in furnishing information to the Board.

(c) Making a misrepresentation to obtain licensure or to otherwise violate the Board's licensure act or the rules and regulations of the Board.

(d) Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony under the laws of the United States, or any state or territory of the United States, or to any crime that is a misdemeanor, if an essential element of the crime is dishonesty or is directly related to providing home medical equipment services.

(e) Gross negligence or gross misconduct in providing home medical equipment services.

(f) Aiding, assisting, or willingly permitting another person to violate any provision of the Board's licensure act or rule or regulation of the Board.

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(g) Failing, within thirty (30) days, to provide information in response to a written request of the Board.

(h) Failing to cooperate with an inspection or with an investigation conducted by the Board.

(i) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

(j) Denial, revocation, suspension, or restriction of a license in another state or jurisdiction to provide home medical equipment services for a reason other than failure to renew the license.

(k) Directly or indirectly giving to or receiving from any person, partnership, corporation, or other legal entity any fee, commission, rebate, or other form of compensation for services not actually or personally rendered.

(l) A finding that a licensee on probationary status has violated the terms of the probation.

(m) Willfully making or filing false records, reports, or billings in the course of providing home medical equipment services, including, but not limited to, false records, reports, or billings filed with state or federal agencies or departments.

(n) The use of any words, abbreviations, figures, or letters with the intention of indicating practice as a home medical equipment services provider without having first obtained a license from the Board.

(o) Failure to comply with state or federal laws and regulations concerning home medical equipment services providers.

(p) Solicitation of home medical equipment services using false or misleading advertising.

(q) Failure to prominently display a license at each licensed location.

(r) Failure to report a change of name, address, control, ownership, or administration to the Board within thirty (30) days after the date of change.

(6) When the Board finds any person guilty of any of the grounds set forth in paragraph (5), it may enter an order imposing one or more of the following penalties:

(a) A letter of reprimand.

(b) Probation for a period of time and subject to such conditions as may be prescribed by the Board.

(c) Denial of an application for an initial or renewal license.

(d) Suspension of a license for a period of time established by the Board, with or without automatic reinstatement.

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(e) Revocation of a license.

(f) Payment of restitution to each consumer negatively affected by the prohibited act. Proof of such restitution shall be a signed and notarized release executed by the consumer or the estate of the consumer.

(g) Assessment of the costs of the disciplinary proceedings.

(7) Failure to comply with any final order of the Board is also cause for suspension or revocation of a license. The Board may suspend or revoke any license which has been issued based on false or fraudulent representations.

(8) The Board may informally resolve any alleged violation of its licensure act or rules and regulations by stipulation, agreed settlement, or consent order, in lieu of an administrative hearing.

(9) In addition to any other disciplinary action authorized hereunder, the Board may levy and collect administrative fines for violations of the Board's licensure act or its rules and regulations in an amount of up to one thousand dollars (\$1,000) for each violation.

(10) Any entity or person found to be providing home medical equipment services without a license shall be subject to an administrative fine of up to one thousand dollars (\$1,000) per day that services were provided without a license and may be administratively enjoined from providing such services until such time as the person or entity comes into compliance. Any person or entity subject to the penalties prescribed in this paragraph (10) may pursue an appeal through the Board in accordance with the procedures set forth in Rule 473-X-7-.01.

(11) The Board may seek injunctive relief against any person or entity found to be in violation of its licensure act or its rules and regulations in addition to any other penalty or disciplinary action authorized hereunder. In an action for an injunction, the Board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney fees, and court costs; provided, however, that no civil penalty shall be awarded to the Board if an administrative fine is assessed pursuant to paragraph (10).

(12) Upon the revocation or suspension of a license, the licensee shall immediately surrender the license to the Board. If the licensee fails to do so, the Board may seize the license.

(13) Any person aggrieved by an adverse action of the Board may appeal the action to the Circuit Court of Montgomery County, in accordance with the Alabama Administrative Procedure Act.

(1) The board may refuse to grant an initial or renewal license if any of the following are found to apply to the applicant, as defined herein:

~~(a) Conviction of a crime that the board determines to be of a nature as to render a person unfit to hold a license.~~

~~(b) Violation of ethical standards promulgated by the board.~~

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~~(c) Fraud or misrepresentation.~~

~~(d) Other just and sufficient cause, such as, but not limited to the following:~~

~~1. Violation of rules, regulations, and standards set forth by the board.~~

~~2. Making misleading, deceptive, untrue, or fraudulent representations.~~

~~3. Engaging in business practices harmful or detrimental to the public.~~

~~4. Conviction of a felony.~~

~~5. Willful or repeated violations of the Rules and Regulations of the Alabama Board of Home Medical Equipment Services Providers.~~

~~6. Falsifying records.~~

~~7. Failure to report a change of name, address, control, ownership or person in charge within 30 days.~~

~~8. Failure to cooperate with an inspection or with an investigation conducted by the board.~~

~~(2) Any person may file a complaint with the board regarding the failure to obtain a license for the provisioning of home medical equipment services as required by this board. Complaints shall be in a form prescribed by the board and shall be verified under oath by the complainant. If the board determines that the complaint is substantive and relevant, it may inspect the operations of the provider to determine compliance with the rules and regulations established by the board. Upon receipt of the inspection report the board may either:~~

~~(a) dismiss the complaint, or~~

~~(b) send notice of non-compliance to the licensee and authorize representatives of the board to negotiate a plan of compliance with the licensee, which may be the negotiation of a written settlement, consent order or default on terms that are mutually agreeable to the parties, which terms may include the assessment of fines or fees to be paid to the board.~~

**HISTORY:**

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**New Rule:** Filed July 20, 2001; effective August 24, 2001. **Amended:** Filed July 10, 2006; effective August 14, 2006.