



Rep. Angelo Saviano

Adopted in House on May 02, 2007

09500HB0128ham001

LRB095 03936 RAS 34729 a

1 AMENDMENT TO HOUSE BILL 128

2 AMENDMENT NO. _____. Amend House Bill 128 on page 2,
3 immediately below line 6, by inserting the following:

4 "Section 5. The Home Medical Equipment and Services
5 Provider License Act is amended by changing Sections 10, 20,
6 25, 65, 75, 80, 85, 90, 95, 110, 115, 120, 125, 130, 135, and
7 145 as follows:

8 (225 ILCS 51/10)

9 (Section scheduled to be repealed on January 1, 2008)

10 Sec. 10. Definitions. As used in this Act:

11 (1) "Department" means the Department of Financial and
12 Professional Regulation.

13 (2) "Secretary" "~~Director~~" means the Secretary
14 ~~Director~~ of Financial and Professional Regulation.

15 (3) "Board" means the Home Medical Equipment and
16 Services Board.

1 (4) "Home medical equipment and services provider" or
2 "provider" means a legal entity, as defined by State law,
3 engaged in the business of providing home medical equipment
4 and services, whether directly or through a contractual
5 arrangement, to an unrelated sick or disabled individual
6 where that individual resides.

7 (5) "Home medical equipment and services" means the
8 delivery, installation, maintenance, replacement, or
9 instruction in the use of medical equipment used by a sick
10 or disabled individual to allow the individual to be
11 maintained in his or her residence.

12 (6) "Home medical equipment" means technologically
13 sophisticated medical devices, apparatuses, machines, or
14 other similar articles bearing a label that states
15 "Caution: federal law requires dispensing by or on the
16 order of a physician.", which are usable in a home care
17 setting, including but not limited to:

18 (A) oxygen and oxygen delivery systems;

19 (B) ventilators;

20 (C) respiratory disease management devices,
21 excluding compressor driven nebulizers;

22 (D) wheelchair seating systems;

23 (E) apnea monitors;

24 (F) transcutaneous electrical nerve stimulator
25 (TENS) units;

26 (G) low air-loss cutaneous pressure management

1 devices;
2 (H) sequential compression devices;
3 (I) neonatal home phototherapy devices;
4 (J) enteral feeding pumps; and
5 (K) other similar equipment as defined by the
6 Board.

7 "Home medical equipment" also includes hospital beds and
8 electronic and computer-driven wheelchairs, excluding
9 scooters.

10 (7) Address of record" means the designated address
11 recorded by the Department in the applicant's or licensee's
12 application file or license file maintained by the
13 Department's licensure maintenance unit. It is the duty of
14 the applicant or licensee to inform the Department of any
15 change of address and such changes must be made either
16 through the Department's website or by contacting the
17 Department's licensure maintenance unit.

18 (Source: P.A. 90-532, eff. 11-14-97.)

19 (225 ILCS 51/20)

20 (Section scheduled to be repealed on January 1, 2008)

21 Sec. 20. Powers and duties of the Department.

22 (a) The Department shall exercise the powers and duties
23 prescribed by the Civil Administrative Code of Illinois for the
24 administration of licensure Acts and shall exercise other
25 powers and duties necessary for effectuating the purposes of

1 this Act.

2 (b) The Department may adopt rules to administer and
3 enforce this Act, including but not limited to fees for
4 original licensure and renewal and restoration of licenses, and
5 may prescribe forms to be issued to implement this Act. At a
6 minimum, the rules adopted by the Department shall include
7 standards and criteria for licensure and for professional
8 conduct and discipline. The Department shall consult with the
9 Board in adopting rules. Notice of proposed rulemaking shall be
10 transmitted to the Board, and the Department shall review the
11 Board's response and any recommendations made in the response.
12 The Department shall notify the Board in writing with proper
13 explanation of deviations from the Board's recommendations and
14 response.

15 (c) The Department may at any time seek the advice and
16 expert knowledge of the Board on any matter relating to the
17 administration of this Act.

18 (d) (Blank). ~~The Department shall issue a quarterly report~~
19 ~~to the Board of the status of all complaints related to the~~
20 ~~profession and filed with the Department.~~

21 (Source: P.A. 90-532, eff. 11-14-97.)

22 (225 ILCS 51/25)

23 (Section scheduled to be repealed on January 1, 2008)

24 Sec. 25. Home Medical Equipment and Services Board. The
25 Secretary ~~Director~~ shall appoint a Home Medical Equipment and

1 Services Board, in consultation with a state association
2 representing the home medical equipment and services industry,
3 to serve in an advisory capacity to the Secretary ~~Director~~. The
4 Board shall consist of 7 members. Four members shall be home
5 medical equipment and services provider representatives, ~~2 of~~
6 ~~whom represent businesses grossing less than \$500,000 per year~~
7 ~~in revenues, 2 of whom represent businesses grossing \$500,000~~
8 ~~or more per year in revenues, and at least one of whom shall~~
9 ~~also~~ be a pharmacy-based provider. The 3 remaining members
10 shall include one home care clinical specialist, one
11 respiratory care practitioner, and one public member ~~consumer~~
12 ~~of home medical equipment and services.~~

13 Members shall serve 4 year terms and until their successors
14 are appointed and qualified, ~~except that of the initial~~
15 ~~appointments, the consumer member shall be appointed to serve~~
16 ~~for one year, 2 members shall be appointed to serve for 2~~
17 ~~years, 3 members shall be appointed to serve for 3 years, and~~
18 ~~one member who is a home medical equipment and services~~
19 ~~provider representative shall be appointed to serve for 4~~
20 ~~years, and until their successors are appointed and qualified.~~

21 No member shall be reappointed to the Board for a term that
22 would cause continuous service on the Board to exceed 8 years.
23 Appointments to fill vacancies shall be made in the same manner
24 as original appointments, for the unexpired portion of the
25 vacated term.

26 The home medical equipment and services provider

1 representatives appointed to the Board shall have engaged in
2 the provision of home medical equipment and services or related
3 home care services for at least 3 years prior to their
4 appointment, shall be currently engaged in providing home
5 medical equipment and services in the State of Illinois, and
6 must have no record of convictions related to fraud or abuse
7 under either State or federal law.

8 The membership of the Board should reasonably reflect
9 representation from the geographic areas in this State.

10 The Board shall annually elect one of its members as
11 chairperson and vice chairperson.

12 Members of the Board shall receive as compensation a
13 reasonable sum as determined by the Secretary ~~Director~~ for each
14 day actually engaged in the duties of the office, and shall be
15 reimbursed for authorized expenses incurred in performing the
16 duties of the office.

17 The Secretary ~~Director~~ may terminate the appointment of any
18 member for cause which in the opinion of the Secretary ~~Director~~
19 reasonably justifies the termination.

20 ~~Through consultation with members of a state association~~
21 ~~for the home medical equipment and services industry, the Board~~
22 ~~may recommend to the Department rules that specify the medical~~
23 ~~equipment to be included under this Act, that set standards for~~
24 ~~the licensure, professional conduct, and discipline of~~
25 ~~entities that provide home medical equipment and services, and~~
26 ~~that govern the safety and quality of home medical equipment~~

1 ~~and services. The Director shall consider the recommendations~~
2 ~~of the Board.~~

3 Members of the Board shall be immune from suit in an action
4 based upon any disciplinary proceedings or other activities
5 performed in good faith as members of the Board.

6 A majority of Board members currently appointed shall
7 constitute a quorum. A vacancy in the membership of the Board
8 shall not impair the rights of a quorum to exercise the rights
9 and perform all of the duties of the Board.

10 (Source: P.A. 90-532, eff. 11-14-97.)

11 (225 ILCS 51/65)

12 (Section scheduled to be repealed on January 1, 2008)

13 Sec. 65. Fees; returned checks. An entity who delivers a
14 check or other payment to the Department that is returned to
15 the Department unpaid by the financial institution upon which
16 it is drawn shall pay to the Department, in addition to the
17 amount already owed to the Department, a fine of \$50. The fines
18 imposed by this Section are in addition to any other discipline
19 provided under this Act for unlicensed practice or practice on
20 a nonrenewed license. The Department shall notify the entity
21 that fees and fines shall be paid to the Department by
22 certified check or money order within 30 calendar days of the
23 notification. If, after the expiration of 30 days from the date
24 of the notification, the entity has failed to submit the
25 necessary remittance, the Department shall automatically

1 terminate the license or deny the application without a
2 hearing. If the entity seeks a license after termination or
3 denial, the entity shall apply to the Department for
4 restoration or issuance of the license and pay all fees and
5 fines owed to the Department. The Department may establish a
6 fee for the processing of an application for restoration of a
7 license to pay all expenses of processing that application. The
8 Secretary ~~Director~~ may waive the fines due under this Section
9 in individual cases where the Secretary ~~Director~~ finds that the
10 fines would be unreasonable or unnecessarily burdensome.

11 (Source: P.A. 92-146, eff. 1-1-02.)

12 (225 ILCS 51/75)

13 (Section scheduled to be repealed on January 1, 2008)

14 Sec. 75. Refused issuance, suspension, or revocation of
15 license. The Department may refuse to issue, renew, or restore
16 a license, or may revoke, suspend, place on probation,
17 reprimand, impose a fine not to exceed \$10,000 ~~\$1,000~~ for each
18 violation, or take other disciplinary or non-disciplinary
19 action as the Department may deem proper with regard to a
20 licensee for any one or combination of the following reasons:

21 (1) Making a material misstatement in furnishing
22 information to the Department.

23 (2) Violation ~~Negligent or intentional disregard~~ of
24 this Act or its rules.

25 (3) Conviction of or entry of a plea of guilty or nolo

1 contendere to any a crime that is a felony under the laws
2 of the United States or any state or territory thereof ~~that~~
3 ~~is a felony~~ or a misdemeanor, an essential element of which
4 is dishonesty, or ~~conviction of a crime~~ that is directly
5 related to the practice of the profession ~~provision of home~~
6 ~~medical equipment and services.~~

7 (4) Making a misrepresentation to obtain licensure or
8 to violate a provision of this Act.

9 (5) Gross negligence in practice under this Act.

10 (6) Engaging in a pattern of practice or other behavior
11 that demonstrates incapacity or incompetence to practice
12 under this Act.

13 (7) Aiding, assisting, or willingly permitting another
14 person in violating any provision of this Act or its rules.

15 (8) Failing, within 30 ~~60~~ days, to provide information
16 in response to a written request made by the Department.

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

20 (10) Discipline by another state, District of
21 Columbia, territory, or foreign nation, if at least one of
22 the grounds for the discipline is the same or substantially
23 equivalent to one set forth in this Act.

24 (11) Directly or indirectly giving to or receiving from
25 any person, firm, corporation, partnership, or association
26 any fee, commission, rebate, or other form of compensation

1 for any services not actually or personally rendered.

2 (12) A finding that the licensee, after having its
3 license placed on probationary status, has violated the
4 terms of probation.

5 (13) Willfully making or filing false records or
6 reports in the course of providing home medical equipment
7 and services, including but not limited to false records or
8 reports filed with State agencies or departments.

9 (14) Solicitation of business services, other than
10 according to permitted advertising.

11 (15) The use of any words, abbreviations, figures, or
12 letters with the intention of indicating practice as a home
13 medical equipment and services provider without a license
14 issued under this Act.

15 (16) Failure to file a return, or to pay the tax,
16 penalty, or interest shown in a filed return, or to pay any
17 final assessment of tax, penalty, or interest, as required
18 by any tax Act administered by the Department of Revenue,
19 until such time as the requirements of any such tax Act are
20 satisfied.

21 (17) Failure to comply with federal or State laws and
22 regulations concerning home medical equipment and services
23 providers.

24 (18) Solicitation of professional services using false
25 or misleading advertising.

26 (19) Failure to display a license in accordance with

1 Section 45.

2 (20) Habitual or excessive use or addiction to alcohol,
3 narcotics, stimulants, or any other chemical agent or drug
4 that results in the inability to practice with reasonable
5 judgment, skill, or safety.

6 (21) Physical illness, mental illness, or disability,
7 including without limitation deterioration through the
8 aging process and loss of motor skill, that results in the
9 inability to practice the profession with reasonable
10 judgment, skill, or safety.

11 (Source: P.A. 90-532, eff. 11-14-97.)

12 (225 ILCS 51/80)

13 (Section scheduled to be repealed on January 1, 2008)

14 Sec. 80. Cease and desist order.

15 (a) If any entity violates a provision of this Act, the
16 Secretary ~~Director~~ may, in the name of the People of the State
17 of Illinois, through the Attorney General of the State of
18 Illinois, petition for an order enjoining the violation or for
19 an order enforcing compliance with this Act. Upon the filing of
20 a verified petition in court, the court may issue a temporary
21 restraining order, without notice or bond, and may
22 preliminarily and permanently enjoin the violation, and if it
23 is established that the entity has violated or is violating the
24 injunction, the court may punish the offender for contempt of
25 court. Proceedings under this Section shall be in addition to,

1 and not in lieu of, all other remedies and penalties provided
2 by this Act.

3 (b) If an entity holds itself out as a provider of home
4 medical equipment and services without a license issued under
5 this Act, an interested party or any person injured thereby, in
6 addition to the Secretary ~~Director~~, may petition for relief as
7 provided in subsection (a) of this Section.

8 (c) Whenever in the opinion of the Department an entity
9 violates a provision of this Act, the Department may issue a
10 rule to show cause why an order to cease and desist should not
11 be entered against the entity. The rule shall clearly set forth
12 the grounds relied upon by the Department and shall provide a
13 period of 7 days from the date of the rule to file an answer to
14 the satisfaction of the Department. Failure to answer to the
15 satisfaction of the Department shall cause an order to cease
16 and desist to be issued immediately.

17 (Source: P.A. 90-532, eff. 11-14-97.)

18 (225 ILCS 51/85)

19 (Section scheduled to be repealed on January 1, 2008)

20 Sec. 85. Unlicensed practice; civil penalty.

21 (a) An entity who practices, offers to practice, attempts
22 to practice, or holds itself out to practice as a home medical
23 equipment and services provider without being licensed under
24 this Act shall, in addition to any other penalty provided by
25 law, pay a civil penalty to the Department in an amount not to

1 exceed \$10,000 ~~\$5,000~~ for each offense as determined by the
2 Department. The civil penalty shall be assessed by the
3 Department after a hearing is held in accordance with the
4 provisions set forth in this Act regarding the provision of a
5 hearing for the discipline of a licensee. The civil penalty
6 shall be paid within 60 days after the effective date of the
7 order imposing the civil penalty. The order shall constitute a
8 judgment and may be filed and executed in the same manner as
9 any judgment from any court of record.

10 (b) The Department may investigate any unlicensed
11 activity.

12 (Source: P.A. 90-532, eff. 11-14-97.)

13 (225 ILCS 51/90)

14 (Section scheduled to be repealed on January 1, 2008)

15 Sec. 90. Inspections ~~Mandatory inspections~~. The Department
16 may ~~shall~~ inspect a licensee for compliance with the
17 requirements of this Act and ~~within 3 years after the date of~~
18 ~~initial licensure and at least once every 3 years thereafter,~~
19 ~~unless the licensee can demonstrate proof of renewal of~~
20 ~~accreditation with a recognized national accrediting body. The~~
21 ~~Department shall~~ conduct random inspections upon renewal of a
22 license, for cause or as necessary to assure the integrity and
23 effectiveness of the licensing process. ~~Upon failure to pass~~
24 ~~inspection, a provider's license shall be suspended or denied~~
25 ~~as applicable, pending review by the Board. The Department may~~

1 ~~authorize qualified individuals to conduct inspections. The~~
2 ~~Department shall set by rule, and pay to an inspector, a fee~~
3 ~~for each inspection. An entity that fails to pass an inspection~~
4 ~~is subject to penalties under Section 80. Upon notice of~~
5 ~~failure to pass an inspection, a provider shall have 30 days to~~
6 ~~appeal the inspection results. On appeal, a provider shall have~~
7 ~~the right to an inspection review or to a new inspection in~~
8 ~~accordance with procedures adopted by the Department. A home~~
9 ~~medical equipment and services provider licensed within 2 years~~
10 ~~after the effective date of this Act is exempt from the~~
11 ~~inspection requirements of this Section during that 2-year~~
12 ~~period.~~

13 (Source: P.A. 90-532, eff. 11-14-97.)

14 (225 ILCS 51/95)

15 (Section scheduled to be repealed on January 1, 2008)

16 Sec. 95. Investigations; notice and hearing.

17 (a) The Department may investigate the actions of an
18 applicant or of an entity holding or claiming to hold a
19 license.

20 (b) The Department shall, before refusing to issue or renew
21 a license or disciplining a licensee, at least 30 days prior to
22 the date set for the hearing, notify in writing the applicant
23 or licensee of the nature of the charges and that a hearing
24 will be held on the date designated. The Department shall
25 direct the applicant or licensee to file a written answer to

1 the Board under oath within 20 days after the service of the
2 notice and inform the applicant or licensee that failure to
3 file an answer will result in default being taken against the
4 applicant or licensee and that the license may be suspended,
5 revoked, placed on probationary status, or other disciplinary
6 action may be taken, including limiting the scope, nature, or
7 extent of business, as the Secretary ~~Director~~ may deem proper.
8 Written notice may be served by personal delivery or certified
9 or registered mail to the applicant or licensee ~~respondent~~ at
10 his or her ~~the~~ address of record ~~the entity's last notification~~
11 ~~to the Department~~. If the entity fails to file an answer after
12 receiving notice, the entity's license may, in the discretion
13 of the Department, be suspended, revoked, or placed on
14 probationary status, or the Department may take whatever
15 disciplinary action it deems proper, including limiting the
16 scope, nature, or extent of the entity's business, or imposing
17 a fine, without a hearing, if the act or acts charged
18 constitute sufficient grounds for such action under this Act.
19 At the time and place fixed in the notice, the Board shall
20 proceed to hear the charges, and the parties or their counsel
21 shall be accorded ample opportunity to present such statements,
22 testimony, evidence, and argument as may be pertinent to the
23 charges or to their defense. The Board may continue a hearing
24 from time to time.

25 (Source: P.A. 90-532, eff. 11-14-97.)

1 (225 ILCS 51/110)

2 (Section scheduled to be repealed on January 1, 2008)

3 Sec. 110. Findings and recommendations. At the conclusion
4 of the hearing the Board shall present to the Secretary
5 ~~Director~~ a written report of its findings and recommendations.
6 The report shall contain a finding of whether or not the
7 accused entity violated this Act or failed to comply with the
8 conditions required in this Act. The Board shall specify the
9 nature of the violation or failure to comply, and shall make
10 its recommendations to the Secretary ~~Director~~.

11 The report of findings and recommendations of the Board may
12 ~~shall~~ be the basis for the Department's order of refusal or for
13 the granting of licensure unless the Secretary ~~Director~~ shall
14 determine that the Board's report is contrary to the manifest
15 weight of the evidence, in which case the Secretary ~~Director~~
16 may issue an order in contravention of the Board's report. The
17 finding is not admissible in evidence against the entity in a
18 criminal prosecution brought for the violation of this Act, but
19 the hearing and finding are not a bar to a criminal prosecution
20 brought for the violation of this Act.

21 (Source: P.A. 90-532, eff. 11-14-97.)

22 (225 ILCS 51/115)

23 (Section scheduled to be repealed on January 1, 2008)

24 Sec. 115. Rehearing on motion. In a case involving the
25 refusal to issue or renew a license or the discipline of a

1 licensee, a copy of the Board's report shall be served upon the
2 respondent by the Department, either personally or as provided
3 in this Act for the service of the notice of hearing. Within 20
4 days after such service, the respondent may present to the
5 Department a motion in writing for a rehearing, which shall
6 specify the particular grounds for the rehearing. If no motion
7 for rehearing is filed, then upon the expiration of the time
8 specified for filing the motion, or if a motion for rehearing
9 is denied, then upon such denial the Secretary ~~Director~~ may
10 enter an order in accordance with recommendations of the Board
11 except as provided in Section 120 of this Act. ~~If the~~
12 ~~respondent shall order from the reporting service and pay for a~~
13 ~~transcript of the record with the time for filing a motion for~~
14 ~~rehearing, the 20 day period within which such a motion may be~~
15 ~~filed shall commence upon the delivery of the transcript to the~~
16 ~~respondent.~~

17 (Source: P.A. 90-532, eff. 11-14-97.)

18 (225 ILCS 51/120)

19 (Section scheduled to be repealed on January 1, 2008)

20 Sec. 120. Rehearing on order of Secretary ~~Director~~.
21 Whenever the Secretary ~~Director~~ is satisfied that substantial
22 justice has not been done in the revocation or suspension of a
23 license or refusal to issue or renew a license, the Secretary
24 ~~Director~~ may order a rehearing by the same or another Board.

25 (Source: P.A. 90-532, eff. 11-14-97.)

1 (225 ILCS 51/125)

2 (Section scheduled to be repealed on January 1, 2008)

3 Sec. 125. Hearing officer. The Secretary ~~Director~~ has the
4 authority to appoint an attorney duly licensed to practice law
5 in the State of Illinois to serve as the hearing officer in an
6 action for refusal to issue or renew a license, or for the
7 discipline of a licensee. The Secretary ~~Director~~ shall notify
8 the Board of an appointment. The hearing officer shall have
9 full authority to conduct the hearing. The hearing officer
10 shall report his or her findings and recommendations to the
11 Board and the Secretary ~~Director~~. The Board shall ~~have 60 days~~
12 ~~from receipt of the report to~~ review the report of the hearing
13 officer and present its findings of fact, conclusions of law
14 and recommendation to the Secretary ~~Director~~. If the Board
15 fails to present its report ~~within the 60 day period~~, the
16 Secretary ~~may~~ ~~Director shall~~ issue an order based on the report
17 of the hearing officer. If the Secretary ~~Director~~ determines
18 that the Board's report is contrary to the manifest weight of
19 the evidence, he or she may issue an order in contravention of
20 the Board's report.

21 (Source: P.A. 90-532, eff. 11-14-97.)

22 (225 ILCS 51/130)

23 (Section scheduled to be repealed on January 1, 2008)

24 Sec. 130. Order or certified copy. An order or a certified

1 copy of an order, over the seal of the Department and
2 purporting to be signed by the Secretary ~~Director~~, shall be
3 prima facie proof that:

4 (1) the signature is the genuine signature of the
5 Secretary ~~Director~~;

6 (2) the Secretary ~~Director~~ is duly appointed and
7 qualified; and

8 (3) the Board and its members are qualified to act.

9 This proof may be rebutted.

10 (Source: P.A. 90-532, eff. 11-14-97.)

11 (225 ILCS 51/135)

12 (Section scheduled to be repealed on January 1, 2008)

13 Sec. 135. Restoration of license. At any time after the
14 suspension or revocation of a license, the Department may
15 restore the license to the accused entity upon the written
16 recommendation of the Board unless, after an investigation and
17 a hearing, the Board determines that restoration is not in the
18 public interest. Restoration under this Section requires the
19 filing of all applications and payment of all fees required by
20 the Department.

21 (Source: P.A. 90-532, eff. 11-14-97.)

22 (225 ILCS 51/145)

23 (Section scheduled to be repealed on January 1, 2008)

24 Sec. 145. Temporary suspension of a license. The Secretary

1 ~~Director~~ may temporarily suspend the license of a home medical
2 equipment and services provider without a hearing,
3 simultaneously with the institution of proceedings for a
4 hearing provided for in Section 95 of this Act, if the
5 Secretary ~~Director~~ finds that evidence in his or her possession
6 indicates that the home medical equipment and services
7 provider's continuation in business would constitute an
8 imminent danger to the public. If the Secretary ~~Director~~
9 temporarily suspends the license of a home medical equipment
10 and services provider without a hearing, a hearing by the Board
11 must be held within 30 days of the suspension.

12 (Source: P.A. 90-532, eff. 11-14-97.)

13 (225 ILCS 51/40 rep.)

14 (225 ILCS 51/175 rep.)

15 Section 10. The Home Medical Equipment and Services
16 Provider License Act is amended by repealing Sections 40 and
17 175."