

By: Turner

H.B. No. 3638

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of durable medical equipment services providers; providing a penalty.

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

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 147 to read as follows:

CHAPTER 147. DURABLE MEDICAL EQUIPMENT SERVICES PROVIDERS

Sec. 147.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Durable medical equipment" means a medical device or supply that:

(A) is prescribed or ordered by a physician for use in a sick or disabled patient's residence to permit the individual to obtain care or treatment; and

(B) is to be maintained in the residence.

(4) "Durable medical equipment services provider" means a person who, in a sick or disabled patient's residence, provides, delivers, installs, maintains, replaces, or provides instruction in the use of durable medical equipment for a fee, directly or by contract.

(5) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 Sec. 147.002. EXEMPTIONS. This chapter does not apply to a  
3 licensed health care provider that the department determines is in  
4 substantial compliance with the standards adopted under this  
5 chapter applicable to a license holder.

6 Sec. 147.003. LICENSE REQUIRED. (a) A person may not  
7 operate as a durable medical equipment services provider unless the  
8 person holds a license issued by the department under this chapter.

9 (b) A person who operates as a durable medical equipment  
10 services provider from more than one location must hold a separate  
11 license for each location.

12 Sec. 147.004. LICENSE FEES. The executive commissioner by  
13 rule shall establish the amount of the fee for obtaining or renewing  
14 a license under this chapter. The executive commissioner shall set  
15 the fee in a reasonable amount designed to recover the direct and  
16 indirect costs to the department of administering and enforcing  
17 this chapter.

18 Sec. 147.005. LICENSE APPLICATION AND ISSUANCE. (a) To  
19 obtain a license, a person must submit a license application  
20 accompanied by a nonrefundable license fee in an amount set by the  
21 executive commissioner.

22 (b) On receiving a license application, the department  
23 shall inspect the applicant's facilities, operations, and premises  
24 and issue a license to each applicant who will operate as a durable  
25 medical equipment services provider in accordance with this  
26 chapter, rules adopted under this chapter, and any applicable  
27 federal laws and regulations.

1       Sec. 147.006. LICENSE RENEWAL. (a) A person holding a  
2 license issued under this chapter must renew the license annually  
3 by submitting a renewal application on a form provided by the  
4 department on a date preceding the first anniversary of the date of  
5 issuance of the license holder's current license as determined by  
6 rules adopted by the executive commissioner.

7       (b) The application must be accompanied by the  
8 nonrefundable renewal fee in the amount set by the executive  
9 commissioner.

10       Sec. 147.007. RULES. The executive commissioner shall  
11 adopt rules to administer this chapter, including rules that govern  
12 the safety and quality of services provided by a durable medical  
13 equipment services provider.

14       Sec. 147.008. STANDARDS. The department shall ensure that  
15 a license holder under this chapter:

16               (1) is a certified provider under the Medicare program  
17 before applying for the license under this chapter and maintains  
18 that certification during the period the person holds the license;

19               (2) maintains safety, quality, and effectiveness in  
20 the person's durable medical equipment service procedures;

21               (3) complies with applicable state and federal laws  
22 and rules governing the Medicaid program; and

23               (4) maintains safe facilities and delivery vehicles.

24       Sec. 147.009. PROVISIONAL LICENSE. (a) The department may  
25 issue a provisional license to a durable medical equipment services  
26 provider if:

27               (1) the provider is not in compliance with the

1 standards for a license under this chapter; and

2 (2) the department determines issuing the provisional  
3 license is appropriate.

4 (b) The department shall, on the date the provisional  
5 license is issued, provide a list of areas of noncompliance to the  
6 durable medical equipment services provider receiving the  
7 provisional license.

8 (c) A provisional license issued under this section is valid  
9 for 90 days from the date the license is issued. A durable medical  
10 equipment services provider holding a provisional license may  
11 submit a new application for a reinspection and issuance of a  
12 license under Section 147.005, along with the required fee, not  
13 later than a date prescribed by the department that occurs before  
14 the date the provisional license expires. The department shall  
15 conduct the reinspection after receiving an application under this  
16 subsection, but not later than 75 days after the date the  
17 provisional license was issued.

18 Sec. 147.010. INSPECTIONS. The department may inspect the  
19 premises and operations of a durable medical equipment services  
20 provider:

21 (1) in the course of investigating a consumer  
22 complaint;

23 (2) on the application for renewal of a license issued  
24 under this chapter; or

25 (3) at a random, unannounced time to determine  
26 compliance with this chapter and rules adopted under this chapter.

27 Sec. 147.011. PROVIDER NETWORK. (a) If the commission

1 determines that it would be cost-effective, the commission shall  
2 establish an exclusive network of durable medical equipment  
3 services providers for the Medicaid program.

4 (b) The commission may grant exceptions and allow a durable  
5 medical equipment services provider who is not a member of the  
6 network to provide services under the Medicaid program if the  
7 commission determines the exception is appropriate.

8 Sec. 147.012. CIVIL PENALTY; INJUNCTION. (a) If it appears  
9 that a person has violated or is violating this chapter or an order  
10 issued or a rule adopted under this chapter, the executive  
11 commissioner may request the attorney general or the district  
12 attorney, county attorney, or municipal attorney in the  
13 jurisdiction where the violation is alleged to have occurred, is  
14 occurring, or may occur to institute a civil suit for:

- 15 (1) an order enjoining the violation;  
16 (2) a permanent or temporary injunction, a temporary  
17 restraining order, or other appropriate remedy, if the department  
18 shows that the person has engaged in or is engaging in a violation;  
19 (3) the assessment and recovery of a civil penalty; or  
20 (4) both injunctive relief and a civil penalty.

21 (b) A civil penalty may not exceed \$1,000 a day for each  
22 violation. Each day the violation occurs constitutes a separate  
23 violation for the purposes of the assessment of a civil penalty.

24 (c) In determining the amount of the civil penalty, the  
25 court hearing the matter shall consider:

- 26 (1) the person's history of previous violations;  
27 (2) the seriousness of the violation;

1           (3) the hazard to the health and safety of the public;

2           (4) the demonstrated good faith of the person charged;

3 and

4           (5) any other matter as justice may require.

5           (d) Venue for a suit brought under this section is in Travis  
6 County.

7           SECTION 2. Not later than December 1, 2007, the executive  
8 commissioner of the Health and Human Services Commission shall  
9 adopt rules as required by Chapter 147, Health and Safety Code, as  
10 added by this Act.

11           SECTION 3. A durable medical equipment services provider is  
12 not required to hold a license issued under Chapter 147, Health and  
13 Safety Code, as added by this Act, until January 1, 2008.

14           SECTION 4. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2007.