

REFERENCE TITLE: durable medical equipment

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1515

Introduced by
Senators Burton Cahill; Hale; Representative Ableser

AN ACT

AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; RELATING TO DURABLE MEDICAL EQUIPMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 36, Arizona Revised Statutes, is amended by adding
3 chapter 11, to read:

4 CHAPTER 11

5 DURABLE MEDICAL EQUIPMENT

6 ARTICLE 1. GENERAL PROVISIONS

7 36-1301. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ACCREDITING ORGANIZATION" MEANS THE JOINT COMMISSION ON
10 ACCREDITATION OF HEALTHCARE ORGANIZATIONS OR ANOTHER NATIONAL ACCREDITATION
11 AGENCY WITH STANDARDS FOR ACCREDITATION THAT ARE COMPARABLE TO THE LICENSURE
12 REQUIREMENTS OF THIS ARTICLE.

13 2. "AFFILIATED PERSON" MEANS A PERSON WHO DIRECTLY OR INDIRECTLY
14 MANAGES, CONTROLS OR OVERSEES THE OPERATION OF A CORPORATION OR OTHER
15 BUSINESS ENTITY THAT IS LICENSED PURSUANT TO THIS ARTICLE, REGARDLESS OF
16 WHETHER THE PERSON IS A PARTNER, SHAREHOLDER, OWNER, OFFICER, DIRECTOR, AGENT
17 OR EMPLOYEE OF THE ENTITY.

18 3. "APPLICANT" MEANS AN INDIVIDUAL APPLICANT, IN THE CASE OF A SOLE
19 PROPRIETORSHIP, OR AN OFFICER, DIRECTOR, AGENT, MANAGING EMPLOYEE, GENERAL
20 MANAGER OR AFFILIATED PERSON, OR A PARTNER OR SHAREHOLDER WITH AN OWNERSHIP
21 INTEREST OF AT LEAST FIVE PER CENT IN THE APPLICANT CORPORATION, PARTNERSHIP
22 OR OTHER BUSINESS ENTITY.

23 4. "CONSUMER" MEANS ANY INDIVIDUAL WHO USES DURABLE MEDICAL EQUIPMENT
24 AT THE INDIVIDUAL'S PLACE OF RESIDENCE.

25 5. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

26 6. "DURABLE MEDICAL EQUIPMENT" MEANS ANY MEDICAL DEVICE THAT CAN BE
27 USED IN A RESIDENTIAL SETTING AND INCLUDES ANY EQUIPMENT THAT PROVIDES
28 THERAPEUTIC BENEFITS OR THAT ENABLES THE CONSUMER TO PERFORM CERTAIN TASKS
29 THE CONSUMER IS OTHERWISE UNABLE TO UNDERTAKE DUE TO CERTAIN MEDICAL
30 CONDITIONS, DISABILITIES OR ILLNESSES. DURABLE MEDICAL EQUIPMENT DOES NOT
31 INCLUDE PROSTHETICS, SPLINTS, BRACES OR AIDS THAT ARE CUSTOM FABRICATED BY A
32 LICENSED HEALTH CARE PROVIDER.

33 7. "DURABLE MEDICAL EQUIPMENT PERSONNEL" MEANS PERSONS WHO ARE
34 EMPLOYED BY OR UNDER CONTRACT WITH A DURABLE MEDICAL EQUIPMENT PROVIDER.

35 8. "DURABLE MEDICAL EQUIPMENT PROVIDER" OR "PROVIDER" MEANS A PERSON
36 OR ENTITY THAT SELLS OR RENTS, OR OFFERS TO SELL OR RENT, TO OR FOR A
37 CONSUMER ANY DURABLE MEDICAL EQUIPMENT OR DURABLE MEDICAL EQUIPMENT SERVICES.

38 9. "DURABLE MEDICAL EQUIPMENT SERVICES" MEANS THE DELIVERY,
39 INSTALLATION, MAINTENANCE OR REPLACEMENT OF DURABLE MEDICAL EQUIPMENT, OR
40 INSTRUCTION IN THE USE OF DURABLE MEDICAL EQUIPMENT AND RELATED SUPPLIES.

41 10. "GENERAL MANAGER" MEANS THE INDIVIDUAL WHO HAS THE GENERAL
42 ADMINISTRATIVE CHARGE OF THE PREMISES OF A LICENSED DURABLE MEDICAL EQUIPMENT
43 PROVIDER.

1 11. "LICENSEE" MEANS THE PERSON OR ENTITY TO WHOM A LICENSE TO OPERATE
2 AS A DURABLE MEDICAL EQUIPMENT PROVIDER IS ISSUED BY THE DEPARTMENT PURSUANT
3 TO THIS ARTICLE.

4 12. "MORATORIUM" MEANS A TEMPORARY CESSATION OR SUSPENSION OF THE SALE,
5 RENTAL OR OFFERING OF DURABLE MEDICAL EQUIPMENT OR DURABLE MEDICAL EQUIPMENT
6 SERVICES THAT IS MANDATED BY THE DEPARTMENT.

7 13. "PERSON" MEANS ANY INDIVIDUAL, FIRM, PARTNERSHIP, CORPORATION OR
8 ASSOCIATION.

9 14. "PREMISES" MEANS THOSE BUILDINGS AND EQUIPMENT THAT ARE LOCATED AT
10 THE ADDRESS OF THE LICENSED DURABLE MEDICAL EQUIPMENT PROVIDER TO PROVIDE
11 DURABLE MEDICAL EQUIPMENT SERVICES AND THAT ARE IN REASONABLE PROXIMITY AS TO
12 APPEAR TO THE PUBLIC TO BE A SINGLE PROVIDER LOCATION.

13 15. "RESIDENCE" MEANS THE CONSUMER'S HOME OR PLACE OF RESIDENCE,
14 WHETHER TEMPORARY OR PERMANENT. RESIDENCE INCLUDES NURSING HOMES, ASSISTED
15 LIVING FACILITIES, TRANSITIONAL LIVING FACILITIES, ADULT FAMILY CARE HOMES
16 AND OTHER CONGREGATE RESIDENTIAL FACILITIES.

17 36-1302. Licensure; requirements; exemption from licensure;
18 violation; classification; civil penalties; remedies

19 A. THE FOLLOWING MUST APPLY FOR AND RECEIVE A LICENSE ISSUED BY THE
20 DEPARTMENT PURSUANT TO THIS ARTICLE:

21 1. A PERSON OR ENTITY THAT HOLDS ITSELF OUT TO THE PUBLIC AS PROVIDING
22 DURABLE MEDICAL EQUIPMENT OR DURABLE MEDICAL EQUIPMENT SERVICES IN THIS STATE
23 OR THAT ACCEPTS PHYSICIAN ORDERS FOR DURABLE MEDICAL EQUIPMENT OR DURABLE
24 MEDICAL EQUIPMENT SERVICES IN THIS STATE.

25 2. A PERSON OR ENTITY THAT HOLDS ITSELF OUT TO THE PUBLIC AS PROVIDING
26 DURABLE MEDICAL EQUIPMENT IN THIS STATE THAT TYPICALLY REQUIRES DURABLE
27 MEDICAL SERVICES.

28 B. A PERSON REQUIRED TO BE LICENSED PURSUANT TO THIS SECTION MUST
29 APPLY FOR A LICENSE ON A FORM PRESCRIBED AND PROVIDED BY THE DEPARTMENT AND
30 MUST SUBMIT AN APPLICATION FEE AND INITIAL LICENSURE FEE PRESCRIBED BY THE
31 DEPARTMENT BY RULE. THE DEPARTMENT SHALL ISSUE A LICENSE TO EACH APPLICANT
32 THE DEPARTMENT DETERMINES MEETS ALL OF THE REQUIREMENTS FOR LICENSURE
33 PRESCRIBED BY THE DEPARTMENT BY RULE.

34 C. A LICENSE ISSUED BY THE DEPARTMENT PURSUANT TO THIS ARTICLE EXPIRES
35 TWO YEARS AFTER ITS EFFECTIVE DATE, UNLESS IT IS SUSPENDED OR REVOKED
36 EARLIER. A PERSON OR ENTITY MAY APPLY FOR RENEWAL OF A LICENSE BY SUBMITTING
37 AN APPLICATION FOR RENEWAL AND A LICENSURE RENEWAL FEE AS PRESCRIBED BY THE
38 DEPARTMENT BY RULE.

39 D. SEPARATE LICENSES ARE REQUIRED FOR ALL PREMISES EVEN IF THEY ARE
40 OPERATED UNDER THE SAME MANAGEMENT.

41 E. UNLESS THEY HAVE A SEPARATE COMPANY, CORPORATION OR DIVISION THAT
42 IS IN THE BUSINESS OF PROVIDING DURABLE MEDICAL EQUIPMENT AND DURABLE MEDICAL
43 EQUIPMENT SERVICES FOR SALE OR RENT TO CONSUMERS AT THEIR REGULAR OR
44 TEMPORARY PLACE OF RESIDENCE PURSUANT TO THIS ARTICLE, THE FOLLOWING ARE
45 EXEMPT FROM THE LICENSURE REQUIREMENTS OF THIS ARTICLE:

1 1. PROVIDERS THAT ARE OPERATED BY THE DEPARTMENT OR BY THE FEDERAL
2 GOVERNMENT.

3 2. NURSING HOMES, ASSISTED LIVING FACILITIES, HOME HEALTH AGENCIES,
4 HOSPICES, INTERMEDIATE CARE FACILITIES, HOMES FOR SPECIAL SERVICES,
5 TRANSITIONAL LIVING FACILITIES, HOSPITALS, AMBULATORY SURGICAL CENTERS AND
6 ANY OTHER HEALTH CARE INSTITUTIONS THAT ARE LICENSED BY THE DEPARTMENT
7 PURSUANT TO THIS TITLE.

8 3. MANUFACTURERS AND WHOLESALE DISTRIBUTORS THAT DO NOT SELL DIRECTLY
9 TO CONSUMERS.

10 4. LICENSED HEALTH CARE PRACTITIONERS WHO USE DURABLE MEDICAL
11 EQUIPMENT IN THE COURSE OF THEIR PRACTICE BUT WHO DO NOT SELL OR RENT DURABLE
12 MEDICAL EQUIPMENT TO THEIR PATIENTS.

13 5. PHARMACIES THAT ARE LICENSED PURSUANT TO TITLE 32, CHAPTER 18.

14 F. A PERSON WHO OFFERS OR ADVERTISES DURABLE MEDICAL EQUIPMENT AND
15 DURABLE MEDICAL EQUIPMENT SERVICES TO THE PUBLIC WITHOUT A LICENSE AS
16 REQUIRED PURSUANT TO THIS SECTION AND WHO IS NOT EXEMPT FROM LICENSURE
17 REQUIREMENTS OF THIS SECTION IS GUILTY OF A CLASS 3 FELONY AND IS SUBJECT TO
18 INJUNCTIVE RELIEF PURSUANT TO THIS ARTICLE.

19 G. THE DEPARTMENT SHALL REFER FOR PROSECUTION TO THE APPROPRIATE LAW
20 ENFORCEMENT AGENCY ANY PERSON OR ENTITY THAT IT BELIEVES HAS RECEIVED
21 GOVERNMENT REIMBURSEMENT FOR SERVICES PROVIDED BY AN UNLICENSED PROVIDER.

22 H. IF THE DEPARTMENT DETERMINES THAT A LICENSEE IS CONCURRENTLY
23 OPERATING BOTH LICENSED AND UNLICENSED PROVIDER PREMISES, THE DEPARTMENT MAY
24 IMPOSE A CIVIL PENALTY OR MORATORIUM, OR BOTH, OR REVOKE THE EXISTING
25 LICENSES OF ANY OR ALL OF THE LICENSEE'S LICENSED PROVIDER LOCATIONS UNTIL
26 THE UNLICENSED PROVIDER PREMISES ARE LICENSED. IF THE DEPARTMENT IMPOSES A
27 MORATORIUM, THE LICENSEE MUST CONTINUE WITHOUT INTERRUPTION TO PROVIDE
28 SERVICES RELATED TO EQUIPMENT SOLD OR RENTED BEFORE THE MORATORIUM UNLESS THE
29 DEPARTMENT OTHERWISE DIRECTS.

30 I. A PROVIDER FOUND TO BE OPERATING WITHOUT A LICENSE MAY APPLY FOR
31 LICENSURE BUT MUST CEASE OPERATIONS UNTIL THE DEPARTMENT ISSUES A LICENSE TO
32 THAT PROVIDER.

33 36-1303. Investigations; disciplinary action; civil penalty

34 A. THE DEPARTMENT SHALL CONDUCT LICENSURE COMPLAINT INVESTIGATIONS,
35 INCLUDING FULL LICENSURE INVESTIGATIONS WITH A REVIEW OF ALL LICENSURE
36 STANDARDS. COMPLAINTS RECEIVED BY THE DEPARTMENT FROM INDIVIDUALS,
37 ORGANIZATIONS OR OTHER SOURCES ARE SUBJECT TO REVIEW AND INVESTIGATION BY THE
38 DEPARTMENT.

39 B. AFTER A HEARING HELD PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10,
40 THE DEPARTMENT MAY TAKE ANY OF THE FOLLOWING DISCIPLINARY ACTIONS, ALONE OR
41 IN COMBINATION FOR ANY ACT OF UNPROFESSIONAL CONDUCT:

42 1. REVOKE OR SUSPEND A LICENSE.

43 2. IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS PER
44 DAY FOR EACH VIOLATION OF THIS ARTICLE.

45 3. INITIATE INJUNCTIVE PROCEEDINGS PURSUANT TO THIS ARTICLE.

1 C. THE DEPARTMENT MAY DENY THE ISSUANCE OF A LICENSE TO ANY APPLICANT,
2 OR MAY REVOKE THE LICENSE OF A LICENSEE, THAT:

3 1. MADE A FALSE REPRESENTATION OR OMISSION OF ANY MATERIAL FACT IN
4 MAKING THE APPLICATION, INCLUDING THE SUBMISSION OF AN APPLICATION THAT
5 CONCEALS THE CONTROLLING OR OWNERSHIP INTEREST OR ANY OFFICER, DIRECTOR,
6 AGENT, MANAGING EMPLOYEE, AFFILIATED PERSON, PARTNER OR SHAREHOLDER WHO MAY
7 NOT BE ELIGIBLE TO PARTICIPATE.

8 2. HAS BEEN PREVIOUSLY FOUND BY ANY PROFESSIONAL REGULATORY BOARD OR
9 AGENCY TO HAVE VIOLATED THE STANDARDS OR CONDITIONS RELATING TO LICENSURE OR
10 CERTIFICATION OR THE QUALITY OF SERVICES PROVIDED.

11 3. HAS BEEN OR IS CURRENTLY EXCLUDED, SUSPENDED OR TERMINATED FROM, OR
12 HAS INVOLUNTARILY WITHDRAWN FROM, PARTICIPATION IN THE ARIZONA HEALTH CARE
13 COST CONTAINMENT SYSTEM OR PARTICIPATION IN PROGRAMS OFFERED BY THE ARIZONA
14 HEALTH CARE COST CONTAINMENT SYSTEM OR ANY OTHER GOVERNMENTAL OR PRIVATE
15 HEALTH CARE OR HEALTH INSURANCE PROGRAM.

16 D. THE DEPARTMENT MAY ISSUE AN EMERGENCY ORDER IMMEDIATELY SUSPENDING
17 OR REVOKING A LICENSE IF IT DETERMINES THAT ANY CONDITION WITHIN THE
18 RESPONSIBILITY OF THE DURABLE MEDICAL EQUIPMENT PROVIDER PRESENTS A CLEAR AND
19 PRESENT DANGER TO PUBLIC HEALTH AND SAFETY.

20 E. THE DEPARTMENT MAY IMPOSE AN IMMEDIATE MORATORIUM ON ANY LICENSED
21 DURABLE MEDICAL EQUIPMENT PROVIDER IF THE DEPARTMENT DETERMINES THAT ANY
22 CONDITION WITHIN THE RESPONSIBILITY OF THE DURABLE MEDICAL EQUIPMENT PROVIDER
23 PRESENTS A THREAT TO PUBLIC HEALTH OR SAFETY.

24 F. FOR THE PURPOSES OF THIS SECTION, "UNPROFESSIONAL CONDUCT"
25 INCLUDES:

26 1. A VIOLATION OF THIS ARTICLE OR A RULE ADOPTED PURSUANT TO THIS
27 ARTICLE.

28 2. COMMITTING AN INTENTIONAL, RECKLESS OR NEGLIGENT ACT THAT AFFECTS
29 THE HEALTH OR SAFETY OF A PATIENT.

30 36-1304. Inspections

31 A. THE DEPARTMENT SHALL INSPECT A LICENSEE FOR COMPLIANCE WITH THE
32 REQUIREMENTS OF THIS ARTICLE WITHIN ONE YEAR AFTER THE DATE OF THE INITIAL
33 LICENSURE AND AT LEAST ONCE EVERY TWO YEARS THEREAFTER. THE DEPARTMENT SHALL
34 CONDUCT RANDOM INSPECTIONS ON RENEWAL OF A LICENSE, FOR CAUSE OR AS
35 NECESSARY, TO ASSURE THE INTEGRITY AND EFFECTIVENESS OF THE LICENSING
36 PROCESS.

37 B. IF A LICENSEE FAILS AN INSPECTION, THE DEPARTMENT SHALL SUSPEND THE
38 LICENSE UNTIL THE DEPARTMENT DETERMINES THAT THE LICENSEE COMPLIES WITH THE
39 REQUIREMENTS OF THIS ARTICLE.

40 36-1305. Minimum standards

41 AS A REQUIREMENT OF CONTINUED LICENSURE, EACH LICENSED DURABLE MEDICAL
42 EQUIPMENT PROVIDER MUST:

43 1. OFFER AND PROVIDE DURABLE MEDICAL EQUIPMENT AND SERVICES, AS
44 NECESSARY, TO CONSUMERS WHO PURCHASE OR RENT EQUIPMENT THAT REQUIRES THESE
45 SERVICES.

- 1 2. PROVIDE AT LEAST ONE CATEGORY OF EQUIPMENT DIRECTLY AND FILL ORDERS
2 FROM ITS OWN INVENTORY.
- 3 3. RESPOND TO ORDERS RECEIVED FOR OTHER EQUIPMENT BY FILLING THOSE
4 ORDERS FROM ITS OWN INVENTORY OR INVENTORY FROM OTHER COMPANIES WITH WHICH IT
5 HAS CONTRACTED TO FILL SUCH ORDERS, OR CUSTOMIZING OR FITTING ITEMS FOR SALE
6 FROM SUPPLIES PURCHASED UNDER CONTRACT.
- 7 4. MAINTAIN TRAINED PERSONNEL TO COORDINATE ORDER FULFILLMENT AND
8 BILLING AND TO SCHEDULE TIMELY EQUIPMENT AND SERVICE DELIVERY.
- 9 5. AS NECESSARY IN RELATION TO THE SOPHISTICATION OF THE EQUIPMENT AND
10 SERVICES BEING PROVIDED, ENSURE THAT DELIVERY PERSONNEL ARE APPROPRIATELY
11 TRAINED TO CONDUCT AN ENVIRONMENT AND EQUIPMENT COMPATIBILITY ASSESSMENT,
12 APPROPRIATELY AND SAFELY SET UP THE EQUIPMENT, INSTRUCT PATIENTS AND
13 CAREGIVERS IN THE SAFE OPERATION AND CLIENT MAINTENANCE OF THE EQUIPMENT AND
14 RECOGNIZE IF ADDITIONAL EDUCATION OR FOLLOW-UP PATIENT COMPLIANCE MONITORING
15 IS APPROPRIATE.
- 16 6. ENSURE THAT PATIENTS ARE MADE AWARE OF SERVICE HOURS AND EMERGENCY
17 SERVICE PROCEDURES.
- 18 7. AT THE TIME OF THE INITIAL DELIVERY, SET UP AN APPROPRIATE
19 FOLLOW-UP DURABLE MEDICAL EQUIPMENT SERVICE SCHEDULE AS NEEDED FOR PERIODIC
20 MAINTENANCE, SUPPLY DELIVERY AND OTHER RELATED ACTIVITIES.
- 21 8. ARRANGE FOR EMERGENCY SERVICE FOR LIFE SUSTAINING HOME MEDICAL
22 EQUIPMENT TWENTY-FOUR HOURS EACH DAY, SEVEN DAYS EACH WEEK.
- 23 9. PROVIDE REFRESHER AND REVIEW TRAINING FOR APPROPRIATE PERSONNEL.
- 24 10. ESTABLISH A SYSTEM FOR RESOLUTION OF COMPLAINTS AND SERVICE
25 PROBLEMS.
- 26 11. PROVIDE FOR TIMELY REPLACEMENT OR DELIVERY OF DISPOSABLE OR
27 CONSUMABLE EQUIPMENT SUPPLIES.
- 28 12. HONOR ALL WARRANTIES EXPRESSED AND IMPLIED UNDER APPLICABLE STATE
29 LAW.
- 30 13. ANSWER ANY QUESTIONS OR COMPLAINTS A CONSUMER HAS ABOUT AN ITEM OR
31 THE USE OF AN ITEM THAT THE CONSUMER PURCHASES OR RENTS.
- 32 14. MAINTAIN AND REPAIR DIRECTLY, OR THROUGH A SERVICE CONTRACT WITH
33 ANOTHER COMPANY, ITEMS RENTED TO CONSUMERS.
- 34 15. ACCEPT RETURNS OF SUBSTANDARD OR UNSUITABLE ITEMS FROM CONSUMERS.
35 FOR THE PURPOSES OF THIS PARAGRAPH:
36 (a) "SUBSTANDARD" MEANS LESS THAN FULL QUALITY FOR THE PARTICULAR
37 ITEM.
38 (b) "UNSUITABLE" MEANS INAPPROPRIATE FOR THE CONSUMER AT THE TIME IT
39 WAS FITTED OR SOLD.
- 40 16. DISCLOSE CONSUMER INFORMATION TO EACH CONSUMER WHO RENTS OR
41 PURCHASES ITEMS, INCLUDING ALL APPLICABLE WARRANTY INFORMATION. THIS
42 INFORMATION MUST INCLUDE THE PROVIDER STANDARDS TO WHICH THE ITEM MUST
43 CONFORM.
- 44 17. MAINTAIN PATIENT PAYMENT AND SERVICE RECORDS PURSUANT TO THE
45 REQUIREMENTS OF THIS ARTICLE.

1 18. DESIGNATE APPROPRIATE STAFF AS INTAKE COORDINATORS AND ENSURE THAT
2 ORDER INTAKE PERSONNEL ARE APPROPRIATELY TRAINED IN THE TYPES OF EQUIPMENT
3 AND PRODUCTS, COMMONLY OCCURRING MEDICAL CONDITIONS, SERVICE PROCEDURES,
4 THIRD-PARTY BILLING AND INSURANCE REQUIREMENTS AND COVERAGE.

5 19. TRAIN INTAKE COORDINATORS IN A BASIC UNDERSTANDING OF DEALING WITH
6 PATIENT AND CAREGIVER NEEDS AS WELL AS OTHER, NONDURABLE MEDICAL EQUIPMENT
7 PROVIDER SERVICES AS THEY RELATE TO DURABLE MEDICAL EQUIPMENT SERVICES AND
8 HOME CARE PATIENT CRISIS MANAGEMENT.

9 20. ON REQUEST BY THE CONSUMER OR AS OTHERWISE REQUIRED BY STATE AND
10 FEDERAL LAW, ASSIST CONSUMERS TO MEET THE NECESSARY FILING REQUIREMENTS TO
11 OBTAIN THIRD-PARTY PAYMENT TO WHICH A CONSUMER MAY BE ENTITLED.

12 21. MAINTAIN SAFE PREMISES.

13 22. COMPLY WITH ANY ADDITIONAL QUALIFICATIONS FOR LICENSURE AS REQUIRED
14 BY THE DEPARTMENT.

15 23. COMPLY WITH ALL OTHER STATE AND FEDERAL LAWS.

16 36-1306. Minimum standards; rules

17 THE DEPARTMENT SHALL ADOPT RULES TO ESTABLISH REASONABLE AND FAIR
18 MINIMUM STANDARDS RELATING TO:

19 1. THE QUALIFICATIONS AND MINIMUM TRAINING REQUIREMENTS OF ALL DURABLE
20 MEDICAL EQUIPMENT PERSONNEL.

21 2. LICENSE APPLICATION AND RENEWAL.

22 3. LICENSE AND INSPECTION FEES.

23 4. FINANCIAL ABILITY TO OPERATE.

24 5. THE ADMINISTRATION OF DURABLE MEDICAL EQUIPMENT PROVIDERS.

25 6. PROCEDURES FOR MAINTAINING PATIENT RECORDS.

26 7. ENSURING THAT THE DURABLE MEDICAL EQUIPMENT AND SERVICES PROVIDED
27 BY A DURABLE MEDICAL EQUIPMENT PROVIDER ARE IN ACCORDANCE WITH THE PLAN OF
28 TREATMENT ESTABLISHED FOR EACH PATIENT, IF PROVIDED AS A PART OF A PLAN OF
29 TREATMENT.

30 8. CONTRACTUAL ARRANGEMENTS FOR THE PROVISION OF DURABLE MEDICAL
31 EQUIPMENT AND SERVICES BY PROVIDERS NOT EMPLOYED BY THE DURABLE MEDICAL
32 EQUIPMENT PROVIDER PROVIDING FOR THE CONSUMER'S NEEDS.

33 9. PHYSICAL LOCATION AND ZONING REQUIREMENTS.

34 10. DURABLE MEDICAL EQUIPMENT REQUIRING DURABLE MEDICAL EQUIPMENT
35 SERVICES.

36 36-1307. Patient records

37 A. DURABLE MEDICAL EQUIPMENT PROVIDERS MUST MAINTAIN, FOR EACH
38 PATIENT, RECORDS THAT INCLUDE THE DURABLE MEDICAL EQUIPMENT AND SERVICES THE
39 PROVIDER HAS PROVIDED. THESE RECORDS MUST ALSO INCLUDE:

40 1. IF THE EQUIPMENT WAS ORDERED BY A PHYSICIAN, ANY PHYSICIAN'S ORDER
41 OR CERTIFICATE OF MEDICAL NECESSITY.

42 2. SIGNED AND DATED DELIVERY SLIPS TO VERIFY DELIVERY.

43 3. NOTES REFLECTING ALL SERVICES AND MAINTENANCE PERFORMED, AND ANY
44 EQUIPMENT EXCHANGES.

45 4. THE DATE ON WHICH RENTAL EQUIPMENT WAS RETRIEVED.

1 5. ANY OTHER INFORMATION THAT IS APPROPRIATE TO A SPECIFIC PATIENT
2 RELEVANT TO THE PARTICULAR EQUIPMENT PROVIDED TO THAT PATIENT.

3 B. RECORDS PRODUCED PURSUANT TO SUBSECTION A ARE PATIENT RECORDS AND
4 MUST BE MAINTAINED BY THE DURABLE MEDICAL EQUIPMENT PROVIDER AS PRESCRIBED BY
5 APPLICABLE STATE AND FEDERAL LAW. IF A PATIENT TRANSFERS TO ANOTHER DURABLE
6 MEDICAL EQUIPMENT PROVIDER, A COPY OF THE PATIENT'S RECORDS MUST BE PROVIDED
7 TO THE OTHER DURABLE MEDICAL EQUIPMENT PROVIDER ON THE PATIENT'S REQUEST.

8 C. ALL OTHER STATE AND FEDERAL LAWS RELATING TO THE CONFIDENTIALITY OF
9 PATIENT RECORDS APPLY TO RECORDS MAINTAINED PURSUANT TO THIS SECTION.

10 36-1308. Public records

11 MEDICAL AND PERSONAL IDENTIFYING INFORMATION ABOUT PATIENTS OF A
12 DURABLE MEDICAL EQUIPMENT PROVIDER THAT IS RECEIVED BY THE LICENSING AGENCY
13 THROUGH REPORTS OR INSPECTIONS IS CONFIDENTIAL AND IS EXEMPT FROM PUBLIC
14 DISCLOSURE UNLESS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW.

15 36-1309. Injunctions

16 A. IN ADDITION TO ALL OTHER AVAILABLE REMEDIES, IF THE DEPARTMENT
17 BELIEVES THAT A PERSON HAS VIOLATED THIS ARTICLE OR A RULE ADOPTED PURSUANT
18 TO THIS ARTICLE, THE DEPARTMENT THROUGH THE ATTORNEY GENERAL OR THE COUNTY
19 ATTORNEY OF THE COUNTY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED MAY
20 APPLY TO THE SUPERIOR COURT IN THAT COUNTY FOR AN INJUNCTION RESTRAINING THAT
21 PERSON FROM ENGAGING IN THE VIOLATION.

22 B. THE COURT SHALL ISSUE A TEMPORARY RESTRAINING ORDER, A PRELIMINARY
23 INJUNCTION OR A PERMANENT INJUNCTION WITHOUT REQUIRING THE DEPARTMENT TO POST
24 A BOND.

25 C. SERVICE OF PROCESS MAY BE ON THE DEFENDANT IN ANY COUNTY OF THIS
26 STATE WHERE THE DEFENDANT IS FOUND.

27 36-1310. Patient referrals and rebates: prohibition; compliance
28 with federal law

29 EACH LICENSEE MUST COMPLY WITH STATE AND FEDERAL LAWS REGARDING
30 PROHIBITED PATIENT REFERRALS AND REBATES. A LICENSEE THAT VIOLATES THIS
31 SECTION COMMITS AN ACT OF UNPROFESSIONAL CONDUCT.

32 36-1311. Durable medical equipment fund

33 A. THE DURABLE MEDICAL EQUIPMENT FUND IS ESTABLISHED CONSISTING OF
34 FEES AND CIVIL PENALTIES COLLECTED PURSUANT TO THIS ARTICLE. THE DEPARTMENT
35 SHALL ADMINISTER THE FUND.

36 B. MONIES DEPOSITED IN THE FUND ARE SUBJECT TO LEGISLATIVE
37 APPROPRIATION AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING
38 TO LAPSING OF APPROPRIATIONS.

39 C. ON NOTICE FROM THE DEPARTMENT, THE STATE TREASURER SHALL INVEST AND
40 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED
41 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.