

Report on the

# Board of Home Medical Equipment

Montgomery, Alabama



## Department of Examiners of Public Accounts

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*Rachel Laurie Riddle, Chief Examiner*





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August 18, 2021

Senator Will Barfoot  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Barfoot,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Alabama Board of Home Medical Equipment in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Alabama Board of Home Medical Equipment, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink that reads "Rachel Laurie Riddle". The signature is written in a cursive style.

Rachel Laurie Riddle  
Chief Examiner

**Examiner**  
Christine Kilpatrick



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# **PROFILE**

## **Purpose/Authority**

The Board of Home Medical Equipment Services Providers was created by Act No. 739, Acts of Alabama 2000. The Board was renamed the Board of Home Medical Equipment by Act No. 172, Acts of Alabama 2014. The Board licenses and regulates the operation of home medical equipment providers in the State of Alabama. The Board operates under the authority of the *Code of Alabama 1975*, Section 34-14C-1 through 34-14C-8.

<b><u>Characteristics</u></b>	
<b>Members and Selection</b>	<p>A minimum of nine members appointed by the Governor. Nine members currently serving.</p> <ul style="list-style-type: none"><li>• Members employed in the home medical equipment industry are selected from a list submitted by the Alabama Durable Medical Equipment Association, or its successor.</li><li>• The consumer member is selected from a list of names submitted by the Governor’s Office on Disability, or its successor.</li><li>• The physician member is selected from a list of names submitted by the Medical Association of Alabama, or its successor.</li><li>• The acute-care hospital community member is selected from a list submitted by the Alabama Hospital Association, or its successor.</li><li>• The home health agency community member is selected from a list of names submitted by the Home Care Association of Alabama, or its successor.</li></ul> <p><i>Code of Alabama 1975</i>, Section 34-14C-2(a)</p>
<b>Term</b>	<p>Members serve four-year terms. Members serve until their successors are appointed by the Governor. No member can serve more than two consecutive terms.</p> <p><i>Code of Alabama 1975</i>, Section 34-14C-2(b)</p>
<b>Qualifications</b>	<p>A majority of members are required to be employed in the home medical equipment industry, and at least one person from each of the following categories:</p> <ul style="list-style-type: none"><li>• A consumer of home medical equipment services.</li><li>• A physician</li></ul>

	<ul style="list-style-type: none"> <li>• A representative from the acute-care hospital community.</li> <li>• A representative from the home health agency community.</li> </ul> <p>Members must be residents of the state and have no record of sanctions related to fraud under federal or state law.</p> <p><i>Code of Alabama 1975</i>, Section 34-14C-2(a)</p>
<b>Consumer Representation</b>	<p>At least one consumer member required by law.</p> <p>One consumer member serving.</p> <p><i>Code of Alabama 1975</i>, Section 34-14C-2(a)</p>
<b>Racial Representation</b>	<p>No specific statutory requirement.</p> <p>Currently none serving.</p>
<b>Geographical Representation</b>	<p>No statutory requirement.</p>
<b>Other Representation</b>	<p>The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.</p> <p><i>Code of Alabama 1975</i>, Section 34-14C-2(a)</p>
<b>Compensation</b>	<p>Members do not receive compensation but are reimbursed for necessary travel expenses at the same rate as state employees.</p> <p><i>Code of Alabama 1975</i>, Section 34-14C-2(c)</p>
<b>Attended Board Member Training</b>	<p>Three Board members Executive Director</p>
<b><u>Operations</u></b>	
<b>Administrator</b>	<p>The Board contracts with The Austin Group, LLC, a private management firm, to provide administrative services, facilities and equipment, investigative services, and logistical support. Claire Austin, president of The Austin Group, serves as the Board's Executive Director. The current annual contract amount is \$65,000.00. The Board previously contracted with Warren &amp; Co., for administrative services until April 2020.</p>
<b>Location</b>	<p>60 Commerce Street, Suite 1440 Montgomery, AL 36104 Office Hours: Monday through Friday 8 am to 5 pm</p>

<b>Employees</b>	The Board has no employees but contracts with The Austin Group, LLC for management services.
<b>Legal Counsel</b>	Michael Nunnelley, Assistant Attorney General, employee of the Attorney General's Office.
<b>Subpoena Power</b>	None except as provided by the Administrative Procedure Act <i>Code of Alabama 1975</i> , Section 41-22-12 for hearings and contested cases.
<b>Internet Presence</b>	<a href="http://www.homemed.alabama.gov">www.homemed.alabama.gov</a> Information available includes: <ul style="list-style-type: none"> <li>• Contact information</li> <li>• Licensing forms</li> <li>• Consumer complaint form</li> <li>• Record of disciplinary actions</li> <li>• Licensee roster</li> <li>• Board calendar</li> <li>• Law and rules</li> </ul>
<b><u>Financial</u></b>	
<b>Source of Funds</b>	Licensing fees, inspection fees, and penalties
<b>State Treasury</b>	Yes, Special Revenue Fund 1078 <i>Code of Alabama 1975</i> , Section 34-14C-7
<b>Required Distributions</b>	No statutory requirements.
<b>Unused Funds</b>	Funds are retained at fiscal year-end. <i>Code of Alabama 1975</i> , Section 34-14C-7
<b><u>Licensure</u></b>	
<b>Licensees</b>	395 Licensees as of February 20, 2021 <i>Source:</i> Executive Director



<b>Licensure Qualifications</b>	<ul style="list-style-type: none"> <li>• Business that has a principal place of business outside this stated shall maintain at least one physical location within the state.</li> <li>• Pass initial site inspection</li> <li>• Liability insurance of at least \$300,000</li> <li>• State of Alabama business license if in Alabama</li> <li>• City or County business license</li> <li>• Copy of Pharmacy Permit (oxygen suppliers)</li> <li>• Copy of Elevator Permit (lift suppliers)</li> <li>• Proof of citizenship or legal presence</li> </ul> <p><i>Code of Alabama 1975</i>, Section 34-14C-4; <i>Administrative Rule</i> 473-X-3-.01 and Appendix II (Forms)</p>
<b>Examinations</b>	No examinations.
<b>Reciprocity</b>	The Board does not have reciprocity with other states.
<b>Renewals</b>	<p>All licenses expire on August 31 of the year following issuance. A license may be renewed within the 60-day period after August 31 upon payment of both the required fee and a late fee.</p> <p>Online renewal is available, and 97% of licensees renewed online in FY 2020.</p> <p><i>Code of Alabama 1975</i>, Section 34-14C-4(d)  <i>Source:</i> Executive Director</p>
<b>Licensee Demographics</b>	Data not collected by the Board
<b>Continuing Education</b>	No requirement.

## **SIGNIFICANT ISSUE**

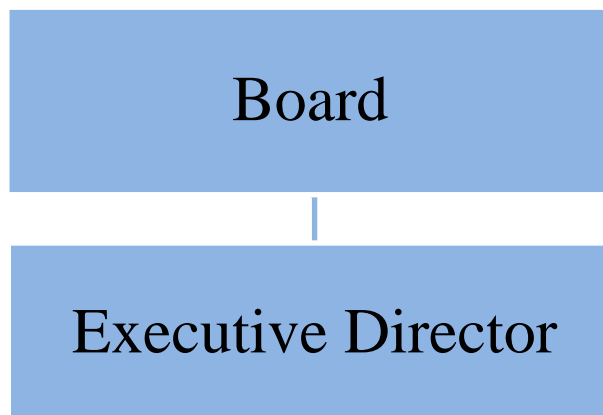
**Significant Issue 2021-01 - The Board's licensure base is steadily declining.** Since the passage of Act No. 172, Acts of Alabama 2014 requiring home medical equipment service providers with a principal place of business outside the state to maintain at least one physical location within the state, the Board's number of licensees has decreased from 467 in fiscal year 2017 to 382 in fiscal year 2020, a decline of 18.20%. The Board's cash balances at the end of the year are also declining. The cash balance at the end of fiscal year 2017 was \$348,308.95 and the cash balance at the end of fiscal year 2020 was \$281,447.28, a decrease of 19.20%.

**The Board did not respond to the significant issue.**

## **STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES**

All prior significant issues and prior findings have been resolved.

## **ORGANIZATION**



## **PERSONNEL**

The Board does not have employees. The Board contracts with The Austin Group, LLC for management services and office space. Claire Austin, president of The Austin Group, LLC, serves as the Board's executive director. The current annual contract amount is \$65,000.00.

### **Legal Counsel**

Michael Nunnelley, an employee of the Attorney General's Office, provides legal counsel to the Board.

## **PERFORMANCE CHARACTERISTICS**

### **Number of Licensees for the Past Four Fiscal Years**

Type of License	Fiscal Year			
	2017	2018	2019	2020
Home Medical Equipment Services Provider	467	434	416	382

**Operating Disbursements per Licensee (FY2020)** - \$350.17

### **Fines/Penalties as a Percentage of Operating Receipts**

	FY 2020	FY 2019	FY 2018	FY 2017
Total Receipts	\$130,270.00	\$125,950.00	\$119,525.00	\$138,625.00
Fines	0.00	0.00	0.00	1,500.00
<b>Percentage</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>.01%</b>

### **Notification of Board decisions to Amend Administrative Rules**

The Board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes. Notices are also posted to the Board's website.

### **Inspections**

The Board is authorized by the *Code of Alabama 1975*, Section 34-14C-4(f) to inspect all license applicants to determine compliance with the Board's statute. The Board is also authorized to conduct random inspections upon license renewal, for cause, and upon receipt of complaints.

Licensees who fail to pass an inspection related to the filing of a complaint, for cause, upon an application for license renewal or for any other cause must cease and desist their operations upon receipt of written notice of failure to pass inspection until they have come into compliance with all applicable standards, unless the Board negotiates a plan for compliance with the licensee and conducts a further inspection for compliance at a time to be determined by the Board. *Administrative Rule* 473-X-4-.01(8) addresses inspection standards.

<b>Schedule of Inspections FY 2017 through FY 2020</b>				
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020*</b>
Pass	104	135	134	71
Fail <sup>1</sup>	18	16	19	16
<b>Total</b>	<b>122</b>	<b>151</b>	<b>153</b>	<b>87</b>
Random Inspection of Closed Facility	10	15	22	1
<i>Source:</i> Executive Director				
*2020 inspections dropped due to Governor's Stay at Home Order				
1. Licensees are notified of deficiencies at the time of the inspection and a reinspection is conducted after deficiencies are corrected.				

## **COMPLAINT HANDLING**

The *Code of Alabama 1975*, Section 34-14C-6 and *Administrative Rule* 473-X-6-.01 provide for a written complaint with the Board for 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.

<b>Initial Contact/Documentation</b>	Complaints accepted by mail. Complaints can be brought by anyone including Board members and staff. The Board has an official complaint form available on its website; the form is required to be used in filing a complaint. Complaints must be signed but are not required to be notarized. Complaints are notified by mail that their complaint was received.
<b>Anonymous Complaints Accepted</b>	Anonymous complaints are not accepted.
<b>Investigative Process / Probable Cause Determination</b>	Executive Director, Investigator and Legal Counsel review the complaint to determine if there is probable cause. Board members do not assist in the investigative process.
<b>Negotiated Settlements</b>	Yes

<b>Schedule of Complaints Resolved FY 2017 through FY 2020</b>					
<b>Year/Number Received</b>	<b>Year/Number Resolved</b>				<b>Pending</b>
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	
2017 / 1	1				-
2018 / 1		1			-
2019 / 4			4		-
2020 / 1				1	-
<b>Source:</b> Executive Director					

**Average Time to Resolve Complaints** - 56 days

**Disposition of Resolved Complaints**

<b># of Complaints</b>	<b>Resolution</b>
2	Cease and desist orders
1	Unfounded
1	Fine and probation
3	Complied with Board directions

**REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

The Board does not coordinate regulation, licensing, or permitting with any other state or federal agency.

## **FINANCIAL INFORMATION**

### **Schedule of Fees**

The *Code of Alabama 1975*, Section 34-14C-2(i) allows the Board to establish and charge reasonable fees relating to the administration and enforcement of the statute. Fees are set in the Board's *Administrative Rule*, Appendix I

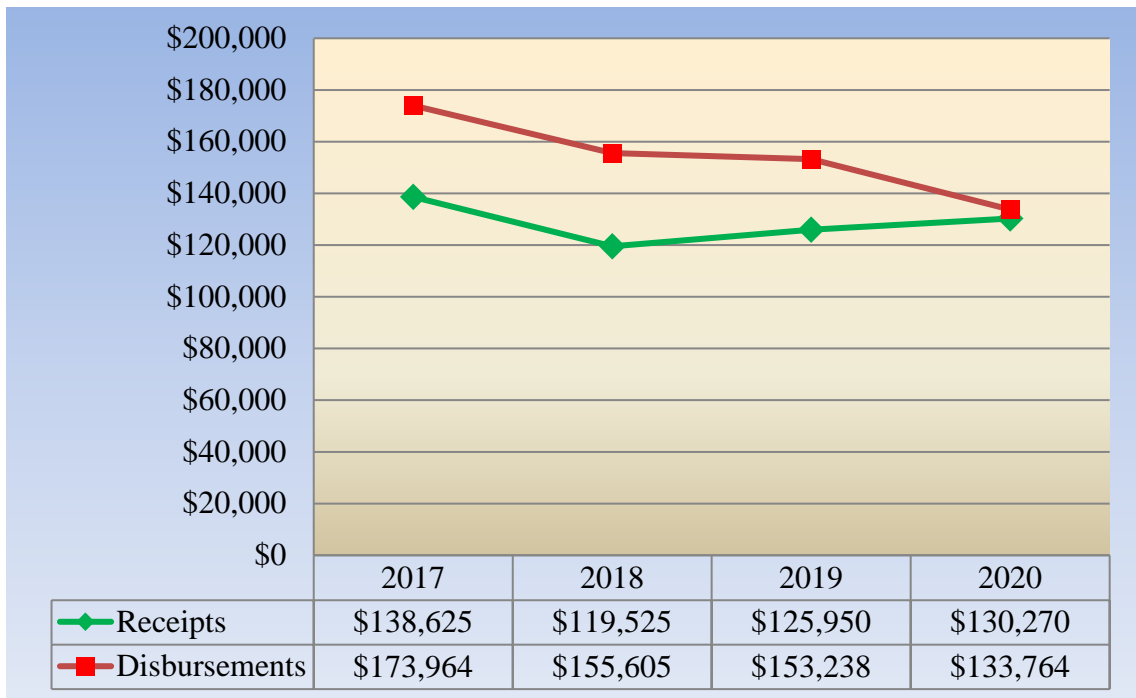
<b>FEE TYPE/ PURPOSE</b>	<b>STATUTORY AUTHORITY</b>	<b>AMOUNT AUTHORIZED</b>	<b>AMOUNT COLLECTED</b>
License Fee (per location)	34-14C-4(b)	Not stated	\$250.00
Renewal Fee (per location)	34-14C-4(b)	Not stated	\$250.00
Initial Inspection Fee (per location)	34-14C-4.1	Not stated	\$500.00
Re-Inspection Fee	34-14C-4(e)	<\$300.00	\$250.00
Site Inspection Fee Upon Change of Physical Location	34-14C-4.1	Not stated	\$275.00
Late Renewal Fee	34-14C-4(d)	Not stated	\$150.00
Processing Fee per Out of State Corporate Branch or Location Providing Services on Behalf of the Licensed Location	34-14C-2(i)	Not stated	\$1,000.00
Administrative Fine – Providing Services without a License (per day)	34-14C-6(i)	≤ \$1,000.00	≤ \$1,000.00
Administrative Fine – Violations of Chapter or Rules (per violation)	34-14C-6(k)	≤ \$1,000.00	≤ \$1,000.00

**Schedule of Receipts, Disbursements and Balances**

October 1, 2016 through September 30, 2020

<b><u>Receipts</u></b>	<b>2019-2020</b>	<b>2018-2019</b>	<b>2017-2018</b>	<b>2016-2017</b>
Licenses and Permits	\$ 130,270.00	\$ 125,950.00	\$ 119,525.00	\$ 137,125.00
Professional Occupation Penalty	-	-	-	1,500.00
<b>Total</b>	<b>130,270.00</b>	<b>125,950.00</b>	<b>119,525.00</b>	<b>138,625.00</b>
		-		
<b><u>Disbursements</u></b>		-		
Personnel Costs	8,971.50	8,971.50	8,971.50	8,369.04
Employee Benefits	6,028.50	6,028.50	6,028.50	6,630.96
Travel-In-State	12,310.28	11,713.93	12,888.65	13,254.29
Rentals and Leases	-	-	-	57.44
Utilities and Communications	1,916.20	2,299.26	2,039.53	2,263.37
Professional Services	100,152.07	120,960.18	122,929.46	140,014.10
Supplies, Materials and Operating Expenses	4,287.56	3,264.40	2,539.20	3,034.43
Transportation Equipment Operations	97.95	-	208.00	340.42
<b>Total</b>	<b>133,764.06</b>	<b>153,237.77</b>	<b>155,604.84</b>	<b>173,964.05</b>
 (Deficiency) of Receipts over Disbursements	 (3,494.06)	 (27,287.77)	 (36,079.84)	 (35,339.05)
 Cash Balance at Beginning of Year	 284,941.34	 312,229.11	 348,308.95	 383,648.00
 Cash Balances at End of Year	 281,447.28	 284,941.34	 312,229.11	 348,308.95
 Reserve for Unpaid Obligations	 (22,500.00)	 (26,000.00)	 (3,930.00)	 (5,595.19)
 Unreserved Cash Balance at end of Year	 \$ 258,947.28	 \$ 258,941.34	 \$ 308,299.11	 \$ 342,713.76

**Operating Receipts vs. Operating Disbursements (Chart)**





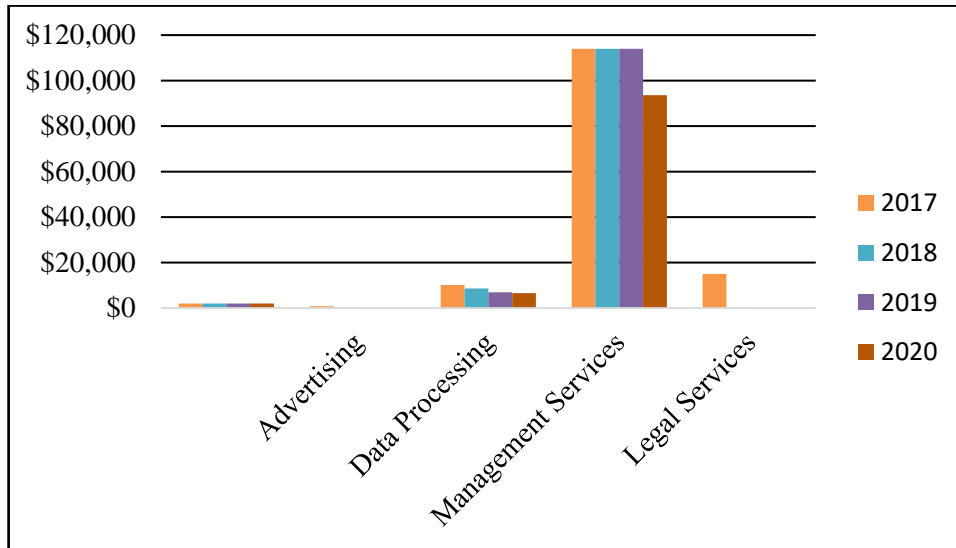
**SUMMARY SCHEDULE OF PROFESSIONAL SERVICE DISBURSEMENTS\***

As of September 30<sup>th</sup>

<b>Type of Service</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Advertising	\$ 810.00	\$ 100.00	\$ 0.00	\$ 0.00
Data Processing	10,204.10	8,669.46	6,960.18	6,568.77
Management	114,000.00	114,000.00	114,000.00	93,583.30
Legal Services	15,000.00	160.00	0.00	0.00
<b>Total</b>	<b>\$ 140,014.10</b>	<b>\$ 122,929.46</b>	<b>\$ 120,960.18</b>	<b>\$ 100,152.07</b>

\*Detailed information presented in the appendix.

**Professional Service Disbursement Chart**



## **QUESTIONNAIRES**

### **Board Member Questionnaire**

A letter was sent to all nine members of the Board of Home Medical Equipment requesting participation in our survey. Three participated in the survey. The percentages, where shown, are based on the number who responded to the question.

**1. What are the most significant issues currently facing the Board of Home Medical Equipment and how is the Board addressing these issues?**

**Board Member #1** – “I think it is important to make sure businesses are complying with state law.”

**Board Member #2** – “The board has been through many changes in the past year. We have a new administrative services contactor in place, new inspectors, several new board members and new legal representation through the AG office.”

**Board Member #3** – “Maintenance of current Providers and the continued new provider inspections. Currently managing this process.”

**2. What, if any, changes to the Board’s laws are needed?**

**Board Member #1** – “I do not know of any at this time.”

**Board Member #2** – “No recommendation at this time.”

**Board Member #3** – “Some of the laws are written with some vague verbiage, but probably intentional due to broad spectrum of providers.”

**3. Is the Board adequately funded?**

<b>Yes</b>	<b>3</b>	<b>100%</b>
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**Board Member #2** – “The board has reduced our administrative cost a great deal over the past five years.”

**Board Member #3** – “In the current environment, yes, but should review in the next 2-3 years.”

**4. Is the Board adequately staffed?**

<b>Yes</b>	<b>2</b>	<b>67%</b>
Unknown	1	33%

**5. Does the Board receive regular reports on the operations of the Board from the chief administrative officer?**

<b>Yes</b>	<b>3</b>	<b>100%</b>
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*Board Member Questionnaire*

**6. Has the Board experienced any significant changes to its operations?**

**Yes**                      **1**                      **100%**

Did not Respond    **2**

**7. Does the Board plan any significant changes in its operations?**

**No**                         **3**                         **100%**

**8. Do you have any other comments you would like to make?**

**Board Member #1** – “I am new to the board, but I am pleased with what I have seen so far.”

**Board Member #2** – “We appreciate the state has allowed for virtual meetings to allow the board to continue to work safely through the COVID pandemic.”

**Board Member #3** – “I was hesitant with the change in the administration of the Board, but Claire and company have done a tremendous job of cleaning up some of the administrative duties and communication to providers and the Board.”

**Licensee Questionnaire**

A letter was sent to one hundred licensees requesting participation in our survey. Twenty-one participated in the survey. The percentages, where shown, are based on the number who responded to the question.

**1. What do you think is the most significant issue(s) currently facing your profession in Alabama?**

**Respondent #1** – “Ensuring legitimate HME providers open a business in Alabama.”

**Respondent #2** – “MEDICARE RATE CUTS.”

**Respondent #3** – “Reimbursement rates.”

**Respondent #4** – “Reimbursements for Medicare; Too many audits.”

**Respondent #5** – “Payor rate reductions make.”

**Respondent #6** – “Payor rate reductions make it difficult to provide the quality of service we prefer to provide our customers.”

**Respondent #7** – “Competitive bidding, red tape in government (constantly finding another way to take money from the business), very little money for the work that goes into billing, setup, and delivery.”

**Respondent #8** – “State policies are clear and reinforced verbally at annual training and in writing which is greatly appreciated. State policy is most up to date but seems limited by federal policy that is outdated and conflicting at times. Blame lies on a lack of personal involvement by federal writers. State examiners are doing a good job.”

**Respondent #9** – “N/A.”

**Respondent #10** – “The HMO insurances. We cannot become a participating provider. A lot of our patients have switched to the HMO’s because of employees of [REDACTED] & [REDACTED] are setting up tables at Senior Citizen locations and steering them to the HMO’s. Terrible for rural areas.”

**Respondent #11** – “In some cases DME stores sells multiple kinds of therapy and it looks like a Walmart, you can get oxygen, socks, CPAP, and some of these therapies are really intense and needs to be patient oriented but these companies are not patient oriented, they don’t show how to use the equipment properly & doesn’t focus on the patient being comfortable with these medical devices. I think that one company should only be allowed to provide service for a few therapies like CPAP, oxygen and nebulizers but not a little bit of everything, another huge thing is that national companies will go into hospitals and create the diagnosis department, hire the doctors, equip the labs, then sell the same exact equipment that the company is diagnosing which is a huge red flag and a huge monopoly and the patients receiving the therapy never has a good experience, doesn’t get the education they need and doesn’t get the correct therapy either.”

**Respondent #12** – “don’t have any issues”

**Respondent #13** – “1. Costs to do business. Accreditation, License, Tax, Insurance, Surety Bonds, prior authorizations, audit/review defense, etc. 2. Reimbursement reductions.”

**Respondent #14** – “The [REDACTED] [REDACTED] of [REDACTED] & [REDACTED] is corrupt. They take dues for "our protection" but they do not fight for us, rather, they fight against us.”

**Respondent #15** – “Large corporations competing with small local businesses via Mail order. Also, Medicare Competitive Bid program and other bureaucratic hypocrisy.”

**Respondent #16** – “Reimbursement vs cost.”

**Respondent #17** – “The guidelines we have to follow to get paid for DME equipment, then the fee schedules are terrible.”

**Respondent #18** – “The Covid virus has been very hard; trying to care for customer and keep my employees safe.”

**Respondent #19** – “Reimbursement rates too low - even though bids reflected all providers need increase - Medicare punted - and our cost continue to rise for products and fuel.”

**Respondent #20** – “COVID 19 and payor reduction in reimbursement.”

**Respondent #21** – “Finding Qualified Personnel for Staffing.”

**2. Do you think regulation of your profession by the Board of Home Medical Equipment is necessary to protect the public welfare?**

Yes	15	71%
No	3	14%
Unknown	2	10%
No Opinion	1	5%

**Respondent #8** – “Clearly Yes. They have been the only effective presence at annual training (besides vendors and guest speakers) to improve patient care and services.”

**Respondent #11** – “Some of these medical devices are really intense and it’s hard for the patients, the company/ hospital giving out the therapy really needs to provide the sources for the patient to find what they need as well as providing them options, a lot of hospitals have sale reps knock on their door and take them to get food and then the hospitals will tell providers to only put out that specific manufacturer equipment even if it means less comfort for the patient and less focused driven data for the doctors to be able to analyze off of. These manufactures create monopolies everywhere as well as the companies that go into the hospitals to own the diagnosis equipment.”

**Respondent #13** – “Regulation should be centralized or reduced. If we are accredited or licensed in multiple states, then there should be allowance for acceptance of the efforts from the other agencies or states.”

**Respondent #14** – “In the O&P world, we are not providing the equipment that could endanger someone if done wrong.”

**Respondent #19** – “Patients are buying from providers that are not licensed in Alabama.”

**Respondent #21** – “Makes sure the business in legit and not working from a trunk of a car.”

**3. Do you think any of the Board’s laws, rules, or policies are an unnecessary restriction on the practice of your profession?**

Yes	3	14%
<b>No</b>	<b>13</b>	<b>62%</b>
Unknown	3	14%
No Opinion	2	10%

**Respondent #5** – “I believe the licensure board is a requirement in today’s environments to ensure Alabama citizens receive quality care within the home.”

**Respondent #11** – “These laws protects no one, it doesn't ensure the comfort or best options for the patients. The laws are pointless and not effective for creating standards for patients, at this point it seems like the AL HME board is just a big fundraiser for the people employed by HME to get paid.”

**Respondent #13** – “In some cases perhaps.”

**Respondent #14** – “I don’t feel it is necessary to be under your board considering we are already regulated by the O&P Board, Medicare and Medicaid, and our ABCOP (national) Board.”

**4. Are you adequately informed by the Board of changes to and interpretations of the Board’s positions, policies, rules, and laws?**

<b>Yes</b>	<b>13</b>	<b>62%</b>
No	4	19%
Unknown	3	14%
No Opinion	1	5%

**5. Does the Board respond to your inquiries in a timely manner?**

<b>Yes</b>	<b>13</b>	<b>62%</b>
No	1	5%
Unknown	7	33%

**Respondent #11** – “Some of the people who work for the board are great and others has gone out of their way to not help and given me incorrect information.”

**6. Has the Board performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>19</b>	<b>90%</b>
Unknown	1	5%
No Opinion	1	5%

**Complainant Questionnaire**

A letter was sent to four complainants whose complaints had been resolved within the past two years, requesting participation in our survey. One participated in the survey.

**1. Was receipt of your complaint acknowledged?**

Yes	1	100%
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**2. Approximately how long after filing your complaint did the Board contact you?**

Immediately	1	100%
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**3. Did the Board communicate the results of the investigation into your complaint to you?**

Yes	1	100%
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**4. Do you think the Board did everything it could to resolve your complaint?**

Yes	1	100%
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**5. Do you have any additional comments you would like to make?**

**Respondent #1** – “I tried to contact the board on two occasions at the end of 2020 and the first of 2021 and could not get a return call or email. I did not know if the board was still working.”

## **APPENDICES**

### **Applicable Statutes**

#### **Section 34-14C-1 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

- (1) BOARD. The Board of Home Medical Equipment as established by this chapter.
- (2) HOME MEDICAL EQUIPMENT. Medical devices usable in a residential setting, as defined in regulations established by the board.
- (3) HOME MEDICAL EQUIPMENT SERVICES. The advertisement, sale, rental, delivery, installation, maintenance, replacement of, or instruction in the use of medical equipment and related supplies used by a sick or disabled individual to allow that individual to obtain care or treatment and be maintained in a residential setting.
- (4) HOME MEDICAL EQUIPMENT SERVICES PROVIDER. A corporation, other business entity, or person engaged in the business of providing home medical equipment services, either directly or through a contractual arrangement, to an unrelated sick or disabled individual in the residence of that individual.

*(Act 2000-739, p. 1619, §1; Act 2014-172, p. 489, §1.)*

#### **Section 34-14C-2 Board of Home Medical Equipment.**

(a) The Governor shall appoint a minimum of nine persons to serve on the Board of Home Medical Equipment, such persons to include a majority who are employed in the home medical equipment industry, and at least one person from each of the following categories: A consumer of home medical equipment services, a physician, a representative from the acute-care hospital community, and a representative from the home health agency community. Those persons employed in the home medical equipment industry shall be selected from a list submitted by the Alabama Durable Medical Equipment Association, or its successor. The consumer member shall be selected from a list of names submitted by the Governor's Office on Disability, or its successor. The physician member shall be selected from a list of names submitted by the Medical Association of Alabama, or its successor. The acute-care hospital community member shall be selected from a list submitted by the Alabama Hospital Association, or its successor. The home health agency community member shall be selected from a list of names submitted by the Home Care Association of Alabama, or its successor. All lists submitted for nominations shall include at least two names for each appointed position to be filled. Board members shall each be citizens of this state and shall have no record of sanctions related to fraud under federal or state law. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(b) The initial members appointed to the board shall serve for terms of three to five years, with one-third of the board being replaced each year, beginning in year four. Thereafter, subsequent appointments shall be for a term of four years. No member shall serve more than two consecutive terms of office. An appointment shall end on October 1, four years from the date of the last term, and each member shall hold office until his or her successor is appointed by the Governor.



(c) Members of the board shall not be entitled to compensation for service, but shall be reimbursed for reasonable travel and meeting expenses, according to a budget developed and approved by the board.

(d) The board shall have the responsibility for creating, establishing, maintaining, and enforcing regulations governing the operation of home medical equipment services providers, including the qualifications of inspectors, the nature of inspections, and the process for appeals.

(e) Whenever a vacancy occurs on the board due to the death or resignation of a currently appointed board member, or other like cause, the vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term of the member, as provided under subsection (b). If a vacancy occurs among those members who are employed in the home medical equipment industry, the appointment shall be made from a list submitted by the Alabama Durable Medical Equipment Association or its successor.

(f) At the request of the board, the Governor may remove a member for failing to attend three consecutive and properly noticed meetings. The Governor may also remove a board member for any of the following reasons:

(1) Misfeasance.

(2) Malfeasance.

(3) Neglect of duty.

(4) Conviction of a felony.

(5) Permanent inability to perform official duties.

(g) The board may hire personnel necessary to carry out the provisions of this chapter. With the exception of the executive director, all personnel shall be subject to the provisions of the state Merit System Act.

(h) The board shall adopt a seal, which shall be affixed to all licenses issued by the board, and shall have all other powers necessary and proper for performing official duties.

(i) The board may establish and charge reasonable fees relating to the administration and enforcement of this chapter including, but not limited to, application, processing, copying, mailing, filing, and other fees as necessary to offset costs.

(j) Absent negligence, recklessness, wantonness, or deliberate misconduct, members of the board are immune from liability for all good faith acts performed in the exercise of their duties as members of the board.

*(Act 2000-739, p. 1619, §2; Act 2010-148, §3; Act 2014-172, p. 489, §1.)*

### **Section 34-14C-3 Duties of board; requirements of providers.**

(a) The board shall adopt regulations that specify the medical equipment to be included in this chapter, set standards for the licensure of entities which provide home medical equipment services, and govern the safety and quality of home medical equipment service providers.

(b) All home medical equipment services providers shall:

(1) Comply with all applicable federal and state laws and regulations governing the safety of home medical equipment services provider facilities and delivery vehicles, the safety and quality of home medical equipment, and the safety, quality, and effectiveness of home medical equipment service procedures.

(2) Comply with any additional standards and testing requirements, as duly promulgated by the board and required for licensure.

*(Act 2000-739, p. 1619, §3; Act 2014-172, p. 489, §1.)*

**Section 34-14C-4 Licensure; inspections.**

(a) Except as otherwise provided in this chapter, a home medical equipment services provider shall be licensed annually by the board before the provider may engage in the provision of home medical equipment services. In Alabama, when a single business entity provides home medical equipment services from more than one location within the state, each such location shall be licensed. A provider of home medical equipment services that has a principal place of business outside this state shall maintain at least one physical location within this state, each of which shall be licensed.

(b) A license applicant shall submit the application for licensing or renewal to the board on a form promulgated and required by the board. Applicants shall pay a reasonable nonrefundable fee established by the board at the time the application is submitted. The board shall have the authority to set reasonable fees for applicants to obtain a license. Upon satisfaction of all applicable standards and requirements for licensure, the board shall issue a license certificate permitting the licensee to engage in providing home medical equipment services. The certificate shall be displayed prominently at each licensed location. No person, partnership, corporation, or other legal entity that is not otherwise exempted under this chapter shall provide home medical equipment services without first obtaining a license issued by the board.

(c) Accreditation by the Joint Commission on Accreditation of Healthcare Organizations, the Community Health Accreditation Program, or other accrediting entities shall not be substituted for compliance with this chapter.

(d) Commencing on June 1, 2014, licenses issued pursuant to this chapter shall expire on August 31 of the year following issuance. A license may be renewed within the 60-day period after August 31 upon payment of both the required fee and a late fee as established by rule of the board. Any license that is not renewed before the end of the 60-day grace period shall lapse. A lapsed license may not be renewed unless the holder reapplies and satisfies then current requirements for initial licensure.

(e) License applicants who, upon initial inspection, are found not to comply with applicable licensing standards, shall be notified by the board of the areas of noncompliance and shall be reinspected for compliance upon application and payment of a reasonable reinspection fee established by the board of up to three hundred dollars (\$300).

(f) Except as provided in this chapter, the board may inspect all license applicants to determine compliance with the requirements of this chapter prior to the issuance of a license.

(g) The board may conduct random inspections upon application for renewal of a license, for cause, and as necessary to ensure the integrity and effectiveness of the licensing process.

(h) At any time upon the filing of a substantive, relevant complaint of a consumer of services or other qualified source as identified by the board, the board may inspect the operations of the provider to determine compliance with the requirements of this chapter.

- (i) The board shall adopt and maintain standards for the individuals charged with conducting the inspections for the purpose of determining compliance with the requirements of this chapter. Board employees or contractors may conduct inspections.
- (j) Upon notice of a failure to pass an inspection and obtain a license, a provider shall have 30 days to appeal the inspection results or be subject to penalties pursuant to Section 34-14C-6. Upon appeal, a provider shall have the right to an inspection review or a new inspection in accordance with procedures promulgated by the board.  
(Act 2000-739, p. 1619, §4; Act 2004-441, p. 777, §1; Act 2014-74, p. 121, §3; Act 2014-172, p. 489, §1.)

**Section 34-14C-4.1 Inspection fees.**

The Board of Home Medical Equipment may establish by rule, and charge and collect, reasonable inspection fees pursuant to the Alabama Administrative Procedure Act.  
(Act 2002-95, p. 308, §3; Act 2014-172, p. 489, §1.)

**Section 34-14C-5 Exemptions.**

The licensure requirements of this chapter do not apply to the following entities or practitioners:

- (1) Home health agencies certified by the State of Alabama to participate in the Medicare and Medicaid programs.
- (2) Hospital based home medical equipment services, whether or not the services are provided through a separate corporation or other business entity.
- (3) Health care practitioners legally eligible to order or prescribe home medical equipment, or who use home medical equipment to treat patients in locations other than the patient's residence, including, but not limited to, physicians, nurses, physical therapists, respiratory therapists, speech therapists, occupational therapists, optometrists, chiropractors, and podiatrists, except for those practitioners, other than a licensed physician practicing medicine, who provide home medical equipment services in a patient's residence.

Nothing in this chapter shall be construed as prohibiting or restricting a licensed physician who is practicing medicine, nor shall anything in this chapter be construed as requiring a physician practicing medicine, to be licensed as a home medical equipment services provider.

- (4) Manufacturers and wholesale distributors, when not selling directly to a patient.
- (5) Retail community pharmacies, including providers of home infusion therapy services.
- (6) Hospice programs, except programs which provide home medical equipment services, including delivery to a patient's residence.
- (7) Skilled nursing facilities, except facilities which provide home medical equipment services, including delivery to a patient's residence.
- (8) Governmental agencies, including fire districts which provide emergency medical services, and contractors to governmental agencies whose business deals only with the contracted agency.
- (9) Mail order companies, as defined by rule of the board.
- (10) Out-of-state providers of home medical equipment and services provided in accordance with state or federal law or regulation to Alabama Medicaid recipients.

(11) A provider of home medical equipment or services that manufactures and distributes its own company-branded power operated or durable insulin infusion pumps or continuous glucose monitors and related supplies.

*(Act 2000-739, p. 1619, §5; Act 2014-172, p. 489, §1; Act 2015-372, §1; Act 2015-445, §1.)*

**Section 34-14C-6 Denial, suspension, or revocation of license; hearing; notice, penalties; appeal.**

(a) The board may deny, suspend, or revoke a license as provided in this section.

(b) 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 this chapter and the Alabama Administrative Procedure Act.

(c) 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. The complaint shall be in a form prescribed by the board.

(d) A copy of the charges, including notice of the time and place of hearing, shall be served by certified mail, return receipt requested, at least 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 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 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.

(e) The board may invoke disciplinary action as outlined in subsection (f) whenever it is established to the satisfaction of the board, after a hearing held in accordance with this chapter and the Alabama Administrative Procedure Act, that any person is guilty of any of the following acts:

(1) Violation of this chapter or a rule of the board.

(2) Making a material misrepresentation in furnishing information to the board.

(3) Making a misrepresentation to obtain licensure or to otherwise violate this chapter.

(4) 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.

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

(6) Aiding, assisting, or willingly permitting another person to violate any provision of this chapter or rule of the board.

(7) Failing, within 30 days, to provide information in response to a written request of the board.

(8) Failing to cooperate with an inspection or with an investigation conducted by the board.

- (9) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
- (10) 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.
- (11) 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.
- (12) A finding that a licensee on probationary status has violated the terms of the probation.
- (13) 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.
- (14) 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.
- (15) Failure to comply with state or federal laws and regulations concerning home medical equipment services providers.
- (16) Solicitation of home medical equipment services using false or misleading advertising.
- (17) Failure to display a license in accordance with this chapter.
- (18) Failure to report a change of name, address, control, ownership, or administration to the board within 30 days after the date of change.
- (f) When the board finds any person guilty of any of the grounds set forth in subsection (e), the board may enter an order imposing one or more of the following penalties:
- (1) A letter of reprimand.
  - (2) Imposition of probation for a period of time and subject to such conditions as may be prescribed by the board.
  - (3) Denial of an application for an initial or renewal license.
  - (4) Suspension of a license for a period of time established by the board, with or without automatic reinstatement.
  - (5) Revocation of a license.
  - (6) 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.
  - (7) Assessment of the costs of the disciplinary proceedings.
  - (g) 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.
  - (h) The board may informally resolve any alleged violation of this chapter or rule of the board by stipulation, agreed settlement, or consent order, in lieu of an administrative hearing.
  - (i) Any entity or person found to be providing home medical equipment services without a license as required by this chapter shall be subject to an administrative fine of up to one thousand dollars (\$1,000) per day that services were provided without a license. Funds collected pursuant to this chapter shall be allocated to the administration of the program.

- (j) Any entity or person found to be providing home medical equipment services without a license as required by this chapter may be administratively enjoined by the board from providing services until such time as the entity or person complies with this chapter.
- (k) In addition to any other disciplinary action authorized by this chapter, the board may levy and collect administrative fines for violations of this chapter or the rules or standards of the board in an amount of up to one thousand dollars (\$1,000) for each violation.
- (l) Any person or entity violating this chapter, upon conviction, shall be guilty of a Class A misdemeanor, and subject to fine or imprisonment, or both.
- (m) Any entity or person subject to the penalties prescribed by subsections (i) and (j) may pursue an appeal through the board according to rules promulgated by the board.
- (n) Any hearings related to matters before the board shall be conducted in Montgomery County.
- (o) In addition to any other penalty or disciplinary action authorized by this chapter, the board may seek an injunction against any person or entity found in violation of this chapter. 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. No civil penalty shall be awarded to the board if an administrative fine is assessed pursuant to subsection (i).
- (p) Upon the revocation or suspension of a license, the licensee shall immediately surrender the license to the board, and if the licensee fails to do so, the board may seize the license.
- (q) 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.
- (Act 2000-739, p. 1619, §6; Act 2004-441, p. 777, §1; Act 2014-172, p. 489, §1.)*

**Section 34-14C-7 Home Medical Equipment Fund.**

There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Home Medical Equipment Fund. All receipts collected by the board under the provisions of this chapter are to be deposited into this fund and shall be used only to carry out the provisions of this chapter. The receipts shall be disbursed only by warrant of the state Comptroller upon the State Treasury, upon itemized vouchers approved by the executive director. No funds shall be withdrawn or expended except as budgeted and allotted according to Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations bill or other appropriations bills.

*(Act 2000-73)*

**Section 34-14C-8 Sunset provision.**

The board shall be subject to the Alabama Sunset Law as an enumerated agency as provided in Section 41-20-3, and shall have a termination date of October 1, 2002, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

*(Act 2000-739, p. 1619, §8; Act 2014-172, p. 489, §1.)*

**Professional Services by Vendor**

	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
<b>Advertising</b>				
Legislative Services Agency	\$ 810.00	\$ 100.00	\$ -	\$ -
<b>Data Processing</b>				
Department of Finance				
Data Processing	2,979.25	2,387.00	-	-
Mailing Services	66.77	19.60	23.20	38.60
FRMS Services	75.25	-	-	-
Comptroller Services	482.83	511.36	462.73	755.42
Interfund Contract Services	6,600.00	1,650.00	3,300.00	2,475.00
Office of Information Technology				
Data Processing	-	4,101.50	1,674.25	3,299.75
Alabama Interactive	-	-	1,500.00	-
Data Processing	-	-	-	-
<b>Total Data Processing</b>	<b>10,204.10</b>	<b>8,669.46</b>	<b>6,960.18</b>	<b>6,568.77</b>
<b>Management Services</b>				
Warren and Company, Inc.	114,000.00	114,000.00	114,000.00	66,500.00
The Austin Group, LLC	-	-	-	27,083.30
<b>Total Management Services</b>	<b>114,000.00</b>	<b>114,000.00</b>	<b>114,000.00</b>	<b>93,583.30</b>
<b>Legal Services</b>				
Board of Funeral Services	15,000.00	-	-	-
Henderson & Associates	-	160.00	-	-
<b>Total Legal Services</b>	<b>15,000.00</b>	<b>160.00</b>	<b>-</b>	<b>-</b>
<b>Total Professional Services</b>	<b>\$ 140,014.10</b>	<b>\$ 122,929.46</b>	<b>\$ 120,960.18</b>	<b>\$ 100,152.07</b>

**Board Members**

**ALABAMA BOARD OF HOME MEDICAL EQUIPMENT**

60 Commerce Street – Suite 1440, Montgomery, Alabama 36104

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**BOARD MEMBERS**

Ms. Lisa Wells,  
**Board Chair**  
Jasper, AL  
Expiration: 10/01/24

**Mr. Jason Jones,**  
**Board Vice Chair**  
Troy, AL  
Expiration: 10/31/2021

**Mr. Vernon Johnson**  
Ozark, AL  
Expiration: 10/31/2016

**Mrs. Susan Haigler**  
Montgomery AL  
Expiration: 10/31/2023:

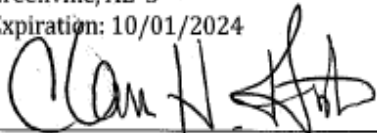
**Mr. Andy Alvarez**  
Madison, AL  
Expiration: 10/31/2021

**Mr. Robert Beard**  
York, AL  
Expiration: 10/31/2019

**Mr. Don Jones**  
Warrior, AL  
Expiration: 10/31/2020

**Dr. Randall Lee Murphy, Jr., MD**  
Montgomery, AL  
Expiration: 10/31/2021

**The Honorable Chris Sells**  
Greenville, AL 3  
Expiration: 10/01/2024



Claire H. Austin  
Executive Director