

Senate Bill 41

By: Senator Unterman of the 45th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to  
2 pharmacists and pharmacies, so as to provide for the licensure of durable medical equipment  
3 suppliers; to provide for a definition; to provide for requirements for licensure; to provide for  
4 discipline and revocation; to provide for inspections; to provide for exemptions; to provide  
5 for rules and regulations; to provide for related matters; to repeal conflicting laws; and for  
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and  
10 pharmacies, is amended in Code Section 26-4-5, relating to definitions, by adding a new  
11 paragraph to read as follows:

12 “(14.05) 'Durable medical equipment' means equipment for which a prescription is  
13 required, including repair and replacement parts for such equipment, and which:

- 14 (A) Can withstand repeated use;
- 15 (B) Has an expected life of at least three years;
- 16 (C) Is primarily and customarily used to serve a medical purpose;
- 17 (D) Generally is not useful to a person in the absence of illness or injury; and
- 18 (E) Is appropriate for use in the home.”

19 **SECTION 2.**

20 Said chapter is further amended in Code Section 26-4-28, relating to the powers, duties, and  
21 authority of the Georgia State Board of Pharmacy, by adding a new paragraph to subsection  
22 (a) to read as follows:

23 “(14.1) The issuance, suspension, denial, and renewal of licenses for suppliers of durable  
24 medical equipment pursuant to Code Section 26-4-51;”

**SECTION 3.**

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Said chapter is further amended by adding a new Code section to read as follows:

"26-4-51.

(a) Any person who supplies durable medical equipment to a consumer and submits a claim for reimbursement by a third party, either directly or through a contractual arrangement, shall possess a durable medical equipment supplier license issued by the board pursuant to this Code section.

(b) The board shall be authorized to issue a license to an applicant for licensure as a durable medical equipment supplier if the applicant:

(1) Submits an application in the form prescribed by the board;

(2) Maintains an office or place of business within this state;

(3) Pays the license fee established by the board pursuant to paragraph (37) of subsection (a) of Code Section 26-4-28; and

(4) Meets all safety standards and requirements established by the board, including but not limited to the establishment of written procedures for:

(A) Ensuring that all personnel engaged in delivery, maintenance, and repair of durable medical equipment receives annual continuing education;

(B) Instructing the patient or patient's caregiver on how to use the durable medical equipment provided;

(C) Receiving and responding to complaints from patients;

(D) Maintaining records of all patients receiving durable medical equipment; and

(E) Management, maintenance, and servicing of durable medical equipment.

(c) The board may issue a license to a Medicare enrolled out-of-state manufacturer or wholesale distributor that provides durable medical equipment directly to consumers if such manufacturer or wholesale distributor possesses a valid license from another state. Such manufacturer or wholesale distributor shall be exempt from the requirements of paragraph (2) of subsection (b) of this Code section.

(d) Licenses issued pursuant to this Code section shall be effective for 36 months from the date of issuance and shall not be transferable or assignable.

(e) The board may refuse to issue or renew, or may suspend, revoke, or restrict the licenses of, or fine any person pursuant to the procedures set forth in Code Section 26-4-60 for any of the grounds set forth in subsection (a) of such Code section or upon a finding that the applicant or licensee:

(1) Has violated any state or federal law or regulation related to the provision of durable medical equipment; or

(2) Fails to meet the safety standards established by the board.

61 (f) The board reserves the right to initially and periodically inspect the applicant's or  
62 licensee's office or place of business within this state. Such applicant or licensee shall be  
63 required to pay a reasonable and adequate fee established by the board pursuant to  
64 paragraph (37) of subsection (a) of Code Section 26-4-28 to cover the cost of such  
65 inspections.

66 (g) The following persons and entities shall be exempt from the requirements of this Code  
67 section unless any such person or entity has a separate company, corporation, or division  
68 that is in the business of supplying durable medical equipment to consumers and submits  
69 a claim for reimbursement by a third party:

70 (1) Pharmacies and pharmacists;

71 (2) Hospitals;

72 (3) Ambulatory surgical centers;

73 (4) Health care facilities owned or operated by the state or federal government;

74 (5) Skilled nursing facilities;

75 (6) Assisted living facilities;

76 (7) Health care practitioners who:

77 (A) Provide durable medical equipment within the scope of practice of the health care  
78 practitioner's profession; and

79 (B) Are licensed in this state to practice the health care practitioner's profession;

80 (8) Suppliers of insulin infusion pumps and related supplies or services;

81 (9) Manufacturers or wholesale distributors that do not sell or rent durable medical  
82 equipment directly to consumers;

83 (10) Renal dialysis providers licensed under Code Section 31-44-4 and persons or  
84 entities that distribute devices necessary to perform home renal dialysis to patients with  
85 chronic kidney disease; and

86 (11) Suppliers of osteogenesis stimulators, transcutaneous electrical nerve stimulators,  
87 pneumatic compression devices, and related supplies or services.

88 (h) The board shall promulgate rules and regulations necessary to implement the  
89 provisions of this Code section. Such rules and regulations shall be established with the  
90 intent of ensuring patient safety and quality of durable medical equipment. The board may  
91 provide by rules and regulations that any person accredited by organizations recognized by  
92 the federal Centers for Medicare and Medicaid Services is deemed to meet all or some of  
93 the requirements of this Code section. Further, the board shall be authorized to require the  
94 completion of background checks, including, but not limited to, criminal history record  
95 checks, on any applicants or licensees, on any persons who will have direct contact with  
96 patients, and on any other licensee personnel deemed necessary for purposes of patient  
97 safety.

98 (i) Nothing in this Code section shall be construed to restrict or prohibit the ability of a  
99 person or business to engage in a private transaction between two parties."

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**SECTION 4.**

101 All laws and parts of laws in conflict with this Act are repealed.