Georgia Occupational Regulation Review Council
Minutes
April 21, 2016

Call to Order: The first meeting of the Georgia Occupational Regulation Review Council for the consideration of House Bill 569, related to the proposed licensure of certain purveyors of durable medical equipment, was held on Thursday, April 21, 2016, in room 450 of the Georgia State Capitol Building. The meeting convened at 10 a.m. The council members in attendance and constituting a quorum were:

Present: Rick Dunn (OPB), Sidney Barrett (DPH), Tim Fleming (SOS), Christopher Sanders (DOR), Ashley Sellers (Ag), Alan Skelton (SAO), and Rep. Sharon Cooper

Absent: Sen. Renee Unterman and Mary Kathryn Yearta, who will no longer be a member of the council due to a change in position

Staff Attendees: James Taylor and Meaghan Ryan

Presenters:

- Teresa Tatum and Tyler Riddle of the Georgia Association of Medical Equipment Suppliers
- Bob Jeffery and Jennifer Bass of the Georgia Composite Medical Board
- Tanja Battle and Laird Miller of the Georgia Board of Pharmacy

New Business:

I. Call to Order

The chairman, Rick Dunn, called the meeting to order and discussed the goal of the meeting. Members would have a discussion with the groups in attendance, who were presenting information related to the bill proposal and regulation.

II. Introduction of Members, GORRC Process and Schedule

The chairman welcomed members to the first meeting. The council introduced themselves and named what agency they represented.

The chairman started off the meeting with a quick overview of the GORRC process, which is outlined in O.C.G.A. 43-1A. HB 569 was referred to the council by Rep. Cooper's committee. The chairman noted that the criteria for the council to use to evaluate the bill is narrowly tailored and urged everyone to keep this criteria in mind. The goal of the council is to recommend through a report whether or not the proposed business or profession should be regulated. If the council recommends regulation, it will also recommend what type of regulation is needed and what board/agency will be the regulatory body.

The chairman reminded members that two more meetings are currently scheduled, yet they may be condensed into one if appropriate.

III. Overview of House Bill 569

James Taylor gave a brief summary of the bill. He noted that the Georgia Composite Medical Board (or the Georgia State Board of Pharmacy) would regulate through licensure those who deliver or accept a physician order to provide disposable medical supplies or durable medical equipment requiring a prescription. There is a substitute version of the bill. The license will be a durable medical equipment supplier license, which would require a fee and be effective for 24 months. The license requires a physical location in Georgia that also meets certain standards set by Medicare. The bill defines durable medical equipment and which groups are excluded.

IV. Scheduled Discussion

a. Georgia Association of Medical Equipment Suppliers

Teresa Tatum and Tyler Riddle

Mr. Riddle stated he was a career durable medical equipment (DME) supplier and his business has 11 locations that serve 85 counties in Georgia. Riddle defined DME as being home-based, prescribed, offering improved function and providing independence for those who use it. DME is not to be worn in or on the body.

He stated that there is no license for providers in Georgia, that this is different from neighboring states (NC, AL, TN, FL) and that the absence of a license results in different guideline requirements for DME suppliers to follow depending on which health plan contracts the supplier has. Riddle noted that most suppliers deliver products to customers' homes, which can have family members with medical needs; however there are no standards for background checks or training for these employees who deliver.

If the supplier bills Medicare, it must meet the 30 supplier standards. The chairman asked what percentage of the suppliers' business is from Medicare. Riddle said this depends on the type of population served in terms of age and illness but a supplier could see up to 50 percent. The chairman asked if the bill excluded cash sales. Ms. Tatum answered, yes, the bill only spoke to prescribed equipment and not what is paid for out of pocket. The chairman asked how these different quality standards differed by health provider. Riddle said each health care provider's standards differed but many are variations of the same standard. He also noted the state currently offers no universal standards or recourse for complaints.

Rep. Cooper asked how unlicensed DME suppliers are hurting the patients in the state and if other states had background checks in place. Riddle replied that measures such as background checks differ state to state. There are no training standards in place in Georgia, and Tatum noted that potential for elder abuse is there and that the employees must show how to use products. The chairman asked why background checks and training standards were not included in the bill and what other states in the Southeast were regulating. The GAMES representatives said that every state differs, but some require a brick and mortar store. There is no test for admission in the currently proposed bill, only a location and Medicare standard requirement. According to GAMES, the DMEPOS Supplier Standards require that the physical location be 200 square feet or larger and that the supplier post business hours, among other requirements. One argument is that a location requirement keeps the tax revenue local and in Georgia.

The chairman asked why Medicare does not have an interest in providing equipment safely and conveniently. The GAMES representatives said that Medicare operates on a "pay and chase" business model, where they pay retroactively and may be 30 to 120 days behind payment of the equipment when responding to complaints. It was noted that Georgians do not always have a choice when choosing healthcare providers to pick a provider with the best service. DME is a relatively new industry and the organization believes licensing will raise the level of patient protection. Around half of their members said suppliers need a brick and mortar business in a survey. Even if had contractor who could show how to use, it would be prohibited if out of state under proposed license. Barrett noted that licensure would severely hurt internet based business. Riddle said currently under Medicare guidelines, suppliers must have a surety bond.

The chairman asked the GAMES representatives to explain the CMS procurement process for DME. GAMES said that it works on a reverse auction-style competitive bidding basis. If you bid the lowest price, can meet the requirements and handle the volume of customers, you would be awarded the contract. Riddle noted that these contracts are non-binding, so if down the road the bid winner decided they could not afford to fulfill the contract, it could deny the contract. Yet, he said the same price would then be offered for contract to the next bidder. In short, he suggested that Georgia DME providers with brick & mortar stores, which provide services and must also pay taxes, cannot afford to compete with the out of state low bidders that provide equipment only. Around 50% of bids were awarded to out of state providers in the first round, and he said it seems that states with in-state location requirements tend to have higher bids. These competitive bids also drive the reimbursement rates in rural areas.

Rep. Cooper said that health plans try to cut costs as much as possible and the best place to do that is with the services they offer. She gave an example of Grady hospital being paid less for the same services offered at Piedmont. She noted that it was not until the state intervened that the issue was fixed. GAMES's goal is to have the same quality of care across the board, and if DME suppliers do not provide to Medicare beneficiaries, they do not have to abide by Medicare's standards.

Sanders asked how we know we are not damaging the current marketplace and harming a bigger population to help a smaller population. Riddle replied that they would defer to the regulating board. Rep. Cooper asked what percent of businesses have closed due to competitive bidding. GAMES did not have a hard number, but estimated that 40 percent of their organization had either closed or sold to a national provider. Tatum noted a requirement to register would provide them with a better number.

Sanders asked about the potential cost of the license, including administration, capital costs and IT infrastructure, assuming it passes. GAMES said they hope the license would be budget neutral and would estimate providing 300 DME licenses. Barrett estimated the cost would be $250,000 initially and $150,000 each year to maintain, depending on the amount of new full-time staff required. Fleming added that this would not be budget neutral if they wanted employees to maintain a network of suppliers and if they inspected locations. Also, he noted that not all license fees translate into money to cover the cost of the license. GAMES said that Alabama has their own Home Medical Equipment Board that operates at $150,000/year. The chairman asked if the regulatory board would include complaint resolution and if they would be enforcing the 30 quality standards. Additionally, would the board have the authority to revoke licenses, and what would be

the grounds for revoking? Tatum noted that the inspectors would not have to inspect all 30 standards because supplier will have CMS organization accreditation, which should have checked standards. She said grounds for revocation would be produced and published in Georgia. Skelton mentioned that, with regard to the physical location requirement, just because a company has to open one physical location to operate in Georgia does not mean it will be close to their customers. Riddle replied that his 11 locations serve a 40 mile radius and can get to patient within a day. He also noted the industry is based off of physician referrals and so there is an incentive to locate near customers.

Rep. Cooper noted that Georgia is an aging state, with rural populations becoming more elderly. Sellers said the statute is kind of light, which would need a fair amount of regulation. She was not sure the rules that would be needed could be done through regulation as the bill was written. She asked if each business must be accredited or each location, to which Riddle responded each location.

At this point, Rep. Cooper questioned whether or not the process should be reversed and if the council should take the bill back up at a later date once the bill has been revised based on the issues brought up during discussion. Sellers asked if this license would push DME suppliers to become more Medicare centered. GAMES said that Medicare's quality standards are the gold standard, but they do not have the best enforcement.

b. Georgia Composite Medical Board

Bob Jeffery
Jennifer Bass

After talking with GAMES, they feel like they are not the best board to license DME. Their main concern was that they lack the experience regulating physical locations and supplies. They would need to invest to develop the process of visiting physical locations. Mr. Jeffery said that the accreditation might not be enough, and investigations might have to occur to ensure the safety of supplies and services. They suggested DCH or the Pharmacy Board would be a better option.

c. Georgia Board of Pharmacy

Tanja Battle
Laird Miller

Mr. Miller is a pharmacist and deals heavily in DME, totaling around 40 percent of his business, and is accredited by Medicare. He thinks that that the healthcare industry is heavily commoditized and believes that GAMES wants to supply the best, not the cheapest. He believes the Pharmacy Board is the right place to regulate the industry due to experience regulating professions with products. He noted that oxygen is under the purview of the Board of Pharmacy. He thinks having standard requirements, including brick and mortar, would be good. As far as the costs to regulate, it might cost more than what was estimated earlier in the meeting because more staff would be needed. He suggested a fiscal note to get a better idea of actual costs before moving forward. Rep. Cooper asked if they receive 100 percent of their fees collected for licensing now that independent, and they do not. They go through the same budget process.

Ms. Battle said there is a general licensing provision that allows all boards to revoke license by setting up rules through regulation. She also said she was concerned about the estimate of DME suppliers, because it always ends up being higher than estimated. Depending on the number of suppliers, it will dictate what they need from the Georgia Drugs and Narcotics Agency. She referenced increase in calls and complaints, management needs, and need for full-time staff. Barrett spoke on what staffing would look like to regulate the license, such as one person for application review, one person for complaint resolution, and at least one for inspections. Consumer protection also takes a lot of staff time. Maintaining the licensed population also takes time and resources. Sanders asked how much of the Pharmacy Board's process is digital. Battle said that most is electronic except for those who choose to use paper or for notarized documents. Sanders also asked what the board's complaint backlog looks like, and the Pharmacy Board representatives estimated complaint resolution (from logging complaint to decision) can take months depending on their board meeting schedule. The chairman asked if the Pharmacy Board's membership would need to change to accept this new licensure by adding a non-pharmacist DME provider. Miller believes the board would be resistant to bringing a non-pharmacist onto the board.

As a last comment, Rep. Cooper suggested she take some time to think on whether the bill needs to be rewritten and to potentially get a fiscal note before continuing with the process. She will get back to the chair prior the next meeting on whether or not she believes the council should continue reviewing the current version of the bill.

V. Open Public Comment

The chairman earlier in the meeting had instructed anyone who wished to speak to sign up. No one in the audience did.

VI. ***Adjourn:*** Meeting adjourned at 11:38 a.m.