

1 SB229
2 147315-3
3 By Senators Reed, Marsh, and Waggoner
4 RFD: Health
5 First Read: 19-FEB-13

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8 SYNOPSIS: The bill would allow for the prescribing of
9 certain schedules of controlled substances by
10 certified registered nurse practitioners and
11 certified nurse midwives.

12 This bill would also authorize the Board of
13 Medical Examiners to create a Limited Purpose
14 Schedule II Permit for certain persons who hold a
15 Qualified Alabama Controlled Substances
16 Registration Certificate (QACSC).

17 This bill would amend existing law to
18 conform to the provisions of this act.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT
23

24 To add a new Article 11, consisting of Sections
25 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,
26 20-2-256, 20-2-257, 20-2-258, and 20-2-259, to Chapter 2 of
27 Title 20 of the Code of Alabama 1975, to allow for the

1 prescribing of certain schedules of controlled substances by
2 certified registered nurse practitioners (CRNP) and certified
3 nurse midwives (CNM) with collaborative practice agreements;
4 to provide for the establishment of qualifications required
5 for certified registered nurse practitioners and certified
6 nurse midwives to obtain a Qualified Alabama Controlled
7 Substances Registration Certificate (QACSC); to provide for
8 prescriptive, administering, and dispensing authority of CRNPs
9 and CNMs in possession of a QACSC; to provide for the
10 establishment of the Board of Medical Examiners (board) as the
11 certifying board for the registration and approval of a CRNP
12 and CNM to obtain or renew a QACSC; to establish an advisory
13 committee to comment on proposed rules; to authorize the board
14 to adopt rules concerning the application procedures, fees,
15 issuance, restriction, limitation, suspension, or revocation
16 of a QACSC and for the conduct of hearings regarding the same;
17 to provide for grounds for the denial, restriction,
18 limitation, suspension, or revocation of a QACSC; to provide
19 for an appeals process for a CRNP or CNM adversely affected by
20 an order of the board denying an application for or
21 restricting, limiting or suspending or revoking a QACSC; to
22 provide for the board to charge and collect fees, congruent
23 with other mid-level providers in Alabama, to defray expenses
24 incurred in the registration of CRNPs and CNMs, and the
25 issuance, restriction, limitation, suspension or revocation of
26 a QACSC to provide immunity to any member of the board, its
27 agents, employees, consultants, or attorneys regarding

1 investigations or proceedings to restrict, limit, suspend, or
2 revoke a QACSC; to add a new Article 12 to Chapter 2 of Title
3 20, Code of Alabama 1975, consisting of Section 20-2-260, to
4 allow a person who holds a Qualified Alabama Controlled
5 Substances Registration Certificate (QACSC) to be issued a
6 Limited Purpose Schedule II Permit to be used in limited
7 specific circumstances; and to amend Sections 20-2-214 and
8 20-2-217 of the Code of Alabama 1975, relating to the
9 Controlled Substances Prescription Database.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. A new Article 11 consisting of Sections
12 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,
13 20-2-256, 20-2-257, 20-2-258, and 20-2-259, is added to
14 Chapter 2, Title 20 of the Code of Alabama 1975, to read as
15 follows:

16 ARTICLE 11

17 Prescribing of Certain Schedules of Controlled
18 Substances by Certified Registered Nurse Practitioners and
19 Certified Nurse Midwives.

20 §20-2-250.

21 As used in this article, the following words shall
22 have the following meanings:

23 (1) ADMINISTER. The direct application of a
24 controlled substance whether by injection, inhalation,
25 ingestion, or any other means, to the body of a patient by any
26 of the following:

1 a. A collaborating physician or, in his or her
2 presence, his or her authorized agent.

3 b. A certified registered nurse practitioner or
4 certified nurse midwife.

5 c. The patient at the direction and in the presence
6 of the collaborating physician, certified registered nurse
7 practitioner, or certified nurse midwife.

8 (2) BOARD. The Board of Medical Examiners of the
9 State of Alabama.

10 (3) CERTIFIED NURSE MIDWIFE or CNM. An advanced
11 practice nurse who is subject to a collaborative practice
12 agreement with a collaborating physician pursuant to Title 34,
13 Chapter 21, Article 5, and who has advanced knowledge and
14 skills relative to the management of women's health care
15 focusing on pregnancy, childbirth, the postpartum period, care
16 of the newborn, family planning, and gynecological needs of
17 women, within a health care system that provides for
18 consultation, collaborative management, or referral as
19 indicated by the health status of the patient.

20 (4) CERTIFIED REGISTERED NURSE PRACTITIONER or CRNP.
21 An advanced practice nurse who is subject to a collaborative
22 practice agreement with a collaborating physician pursuant to
23 Title 34, Chapter 21, Article 5, and who has advanced
24 knowledge and skills in the delivery of nursing services
25 within a health care system that provides for consultation,
26 collaborative management, or referral as indicated by the
27 health status of the patient.

1 (5) COLLABORATING PHYSICIAN. A doctor of medicine or
2 doctor of osteopathy licensed to practice medicine in Alabama
3 who agrees in writing to practice in collaboration with one or
4 more certified registered nurse practitioners or certified
5 nurse midwives in accordance with Title 34, Chapter 21,
6 Article 5, and the rules and regulations adopted by the Board
7 of Medical Examiners and the Board of Nursing.

8 (6) PRESCRIBE or PRESCRIBING. The act of issuing a
9 prescription for a controlled substance.

10 (7) PRESCRIPTION. Any order for a controlled
11 substance written or signed or transmitted by word of mouth,
12 telephone, telegraph, closed circuit television, or other
13 means of communication by a legally competent collaborating
14 physician, certified registered nurse practitioner, or
15 certified nurse midwife authorized by law to prescribe and
16 administer the drug which is intended to be filled,
17 compounded, or dispensed by a pharmacist.

18 (8) QACSC. A Qualified Alabama Controlled Substances
19 Registration Certificate.

20 §20-2-251.

21 (a) The Board of Medical Examiners is hereby
22 designated as the certifying board for the registration and
23 approval of a certified registered nurse practitioner (CRNP)
24 or a certified nurse midwife (CNM) in obtaining or renewing a
25 Qualified Alabama Controlled Substances Registration
26 Certificate (QACSC). The board may adopt regulations
27 concerning the application procedures, fees, and grounds for

1 the restriction, limitation, suspension, or revocation of a
2 QACSC, excluding the charge of expenses for conducting an
3 investigation or expenses of a hearing, and to provide for
4 hearings in connection with the same. The board shall
5 establish a unique QACSC number that identifies the particular
6 applicant as a certified registered nurse practitioner or
7 certified nurse midwife with a valid QACSC. However, nothing
8 in this act shall permit the board to encroach on the powers,
9 duties, and authority of the Board of Nursing in carrying out
10 is legally authorized functions. The Board of Nursing shall
11 remain the sole licensing and disciplinary authority for CRNPs
12 and CNMs.

13 (b) An advisory committee shall be created to
14 comment on proposed rules.

15 (c) The board and its agents, attorneys, or
16 investigators shall be permitted access to the records of any
17 CRNP or CNM, including patient records, which would relate to
18 a request for a QACSC, a renewal of a QACSC, or a possible
19 violation of any provision of the Alabama Uniform Controlled
20 Substances Act, this article, or applicable regulations of the
21 board.

22 (d) (1) The board may establish protocols,
23 formularies, or medical regimens which relate to, govern, or
24 regulate a QACSC, and any such protocol, formulary, or medical
25 regimen shall not be considered a rule under the Alabama
26 Administrative Procedure Act.

1 (2) The formulary of controlled substances that may
2 be prescribed by CRNPs and CNMs shall be approved by the
3 certifying board upon the recommendation of the joint practice
4 committee established by Article 5, commencing with Section
5 34-21-80, Chapter 21, Title 34, but the formulary shall not be
6 considered a rule under the Alabama Administrative Procedure
7 Act.

8 §20-2-252.

9 The Board of Medical Examiners may grant a Qualified
10 Alabama Controlled Substances Registration Certificate (QACSC)
11 to a certified registered nurse practitioner (CRNP) or
12 certified nurse midwife (CNM) who:

13 (1) Is practicing in accordance with this article,
14 Title 34, Chapter 21, Article 5, and all rules and regulations
15 pertaining to collaboration between a qualified physician and
16 a qualified CRNP or a CNM.

17 (2) Submits proof of successful completion of a
18 course or courses approved by the board which includes
19 advanced pharmacology and prescribing trends relating to
20 controlled substances and which is consistent with the same
21 requirements for other mid-level providers.

22 (3) Provides accurate and complete documentation of
23 12 or more months of active, clinical practice with one or
24 more collaborative practices agreement which is governed by
25 Title 34, Chapter 21, Article 5 and which has received final
26 approval from the Board of Medical Examiners and the Alabama
27 Board of Nursing. Temporary approval practice and provisional

1 approval practice shall not be used or considered to meet the
2 requirement of 12 or more months of active, clinical practice.

3 §20-2-253.

4 (a) Upon receipt of a Qualified Alabama Controlled
5 Substances Registration Certificate (QACSC) and a valid
6 registration number issued by the United States Drug
7 Enforcement Administration, a certified registered nurse
8 practitioner (CRNP) or certified nurse midwife (CNM) may
9 prescribe, administer, authorize for administration, or
10 dispense only those controlled substances listed in Schedules
11 III, IV, and V of Article 2, Chapter 2, of this title in
12 accordance with rules adopted by the Board of Medical
13 Examiners and any protocols, formularies, and medical regimens
14 established by the board for regulation of a QACSC.

15 (b) A CRNP or a CNM shall not utilize his or her
16 QACSC for the purchasing, obtaining, maintaining, or ordering
17 of any stock supply or inventory of any controlled substance
18 in any form.

19 (c) A CRNP or a CNM authorized to prescribe,
20 administer, or dispense controlled substances in accordance
21 with this article may not prescribe, administer, or dispense
22 any controlled substance to himself, herself, or his or her
23 spouse, child, or parent.

24 §20-2-254.

25 The Board of Medical Examiners may deny an
26 application of a certified registered nurse practitioner
27 (CRNP) or a certified nurse midwife (CNM) requesting a

1 Qualified Alabama Controlled Substances Registration
2 Certificate (QACSC), deny a request for a renewal of a QACSC,
3 or initiate action against the QACSC of a CRNP or a CNM
4 possessing a QACSC based on the following grounds:

5 (1) Fraud or deceit in applying for, procuring, or
6 attempting to procure a QACSC in the State of Alabama.

7 (2) Conviction of a crime under any state or federal
8 law relating to any controlled substance.

9 (3) Conviction of a crime or offense which affects
10 the ability of the CRNP or CNM to practice with due regard for
11 the health or safety of his or her patients.

12 (4) Prescribing a drug or utilizing a QACSC in such
13 a manner as to endanger the health of any person or patient of
14 the CRNP, CNM, or collaborating physician.

15 (5) Suspension or revocation of the registration
16 number issued to the CRNP or CNM by the United States Drug
17 Enforcement Administration.

18 (6) Excessive dispensing or prescribing of any drug
19 to any person or patient of the CRNP, CNM, or collaborating
20 physician.

21 (7) Unfitness or incompetence due to the use of or
22 dependence on alcohol, chemicals, or any mood-altering drug to
23 such an extent as to render the CRNP or CNM unsafe or
24 unreliable to prescribe drugs or to hold a QACSC.

25 (8) Any violation of a requirement set forth in this
26 article or a rule adopted pursuant to this article.

27 §20-2-255.

1 (a) Any hearing regarding the issuance, restriction,
2 limitation, suspension or revocation of a Qualified Alabama
3 Controlled Substances Registration Certificate (QACSC) held by
4 a certified registered nurse practitioner or a certified nurse
5 midwife for any violations of this article shall be before the
6 Board of Medical Examiners.

7 (b) The board shall have the authority to restrict,
8 suspend, or revoke a QACSC, whenever a CRNP or a CNM is found
9 guilty on the basis of substantial evidence of any of the acts
10 or offenses enumerated in Section 20-2-254. The board shall
11 also have the authority to reinstate or to deny reinstatement
12 of a QACSC.

13 (c) The board may limit revocation or suspension of
14 a QACSC to the particular controlled substance with respect to
15 which grounds for revocation or suspension exist.

16 (d) The board shall promptly notify the Drug
17 Enforcement Administration of the United States Department of
18 Justice and the Alabama Board of Nursing of all orders
19 suspending or revoking a QACSC of a CRNP or a CNM.

20 (e) Any hearing conducted before the board in
21 accordance with this section shall be considered a contested
22 case under the Alabama Administrative Procedure Act, and shall
23 be conducted in accordance with the requirements of this
24 article.

25 §20-2-256.

26 (a) A certified registered nurse practitioner (CRNP)
27 or certified nurse midwife (CNM) adversely affected by an

1 order of the Board of Medical Examiners denying an application
2 for a Qualified Alabama Controlled Substances Registration
3 Certificate (QACSC) or the renewal of a QACSC may obtain
4 judicial review thereof by filing a written petition for
5 review with the Circuit Court of Montgomery County in
6 accordance with Section 41-22-20.

7 (b) A CRNP or a CNM adversely affected by an order
8 of the board suspending, revoking, or restricting a QACSC,
9 whether or not such suspension, revocation, or restriction is
10 limited; or denying reinstatement of a QACSC, may obtain
11 judicial review thereof by filing a written petition for
12 review with the Circuit Court of Montgomery County in
13 accordance with Section 41-22-20.

14 (c) The following procedures shall take precedence
15 over subsection (c) of Section 41-22-20 relating to the
16 issuance of a stay of any order of the board suspending,
17 revoking, or restricting a QACSC. The suspension, revocation,
18 or restriction of a QACSC shall be given immediate effect and
19 no stay or supersedeas shall be granted pending judicial
20 review of a decision by the board to suspend, revoke, or
21 restrict a QACSC unless a reviewing court, upon proof by the
22 party seeking judicial review, finds in writing that the
23 action of the board was taken without statutory authority, was
24 arbitrary or capricious, or constituted a gross abuse of
25 discretion.

26 (d) From the judgment of the circuit court, either
27 the board or any affected party who invoked judicial review

1 may obtain a review of any final judgment of the circuit court
2 under Section 41-22-21. No security shall be required of the
3 board.

4 §20-2-257.

5 The Board of Medical Examiners may charge and
6 collect fees to defray expenses incurred in the registration
7 and issuance of a Qualified Alabama Controlled Substances
8 Registration Certificate (QACSC) and the administration of
9 this article which shall be similar to the same as other
10 mid-level providers. The types and amounts of fees shall be
11 established in rules adopted by the board. The fees shall be
12 retained by the board and may be expended for the general
13 operation of the board.

14 §20-2-258.

15 Any member of the Board of Medical Examiners, any
16 agent, employee, consultant, or attorney of the board, any
17 person making any report or rendering any opinion or supplying
18 any evidence or information or offering any testimony to the
19 board in connection with any investigation or hearing
20 conducted by the board as authorized in this article, shall be
21 immune from any lawsuit or legal proceeding for any conduct in
22 the course of his or her official duties with respect to such
23 investigations or hearings.

24 §20-2-259.

25 The Board of Medical Examiners may adopt rules
26 necessary to carry out the intent, purposes, and provisions of
27 this article.

1 Section 2. A new Article 12, consisting of Section
2 20-2-260, is added to Chapter 2, Title 20 of the Code of
3 Alabama 1975, to read as follows:

4 Article 12. Limited Purpose Schedule II Permit.
5 §20-2-260.

6 (a) The Board of Medical Examiners may at any future
7 date it chooses create a Limited Purpose Schedule II Permit
8 (LPSP), and assess fees associated with the permit, that,
9 along with any other necessary registration, may permit
10 assistants to physicians, certified registered nurse
11 practitioners, or certified nurse midwives to lawfully
12 prescribe, administer, authorize for administration, or
13 dispense only those controlled substances listed in Schedule
14 II substances of Article 2 of Chapter 2 of this title in
15 accordance, as specified and limited by the permit, with rules
16 adopted by the board and any protocols, formularies, and
17 medical regimens established by the board for regulation of a
18 LPSP. Any protocols, formularies, and medical regimens shall
19 not be considered administrative rules under the Alabama
20 Administrative Procedure Act.

21 (b) An assistant to physician, certified registered
22 nurse practitioner, or certified nurse midwife shall not
23 utilize his or her LPSP for the purchasing, obtaining,
24 maintaining, or ordering of any stock supply or inventory of
25 any controlled substance in any form.

26 (c) An assistant to physician, certified registered
27 nurse practitioner, or certified nurse midwife authorized to

1 prescribe, administer, or dispense controlled substances in
2 accordance with this article shall not prescribe, administer,
3 or dispense any controlled substance to his or her own self,
4 spouse, child, or parent.

5 (d) The board may not permit assistants to
6 physicians, certified registered nurse practitioners, or
7 certified nurse midwives to lawfully prescribe, administer,
8 authorize for administration, or dispense all controlled
9 substances listed in Schedule II of Article 2 of Chapter 2 of
10 this title. It is the intent of this article, if and when the
11 board chooses to use this authority at some future date, that
12 the LPSP may be used only at the board's discretion and as
13 limited by the board to specific circumstances and specific
14 drugs.

15 Section 3. Section 20-2-214 and 20-2-217 of the Code
16 of Alabama of 1975, are amended to read as follows:

17 "§20-2-214.

18 "The following persons or entities shall be
19 permitted access to the information in the controlled
20 substances database, subject to the limitations indicated
21 below:

22 "(1) Authorized representatives of the certifying
23 boards, provided, however, that access shall be limited to
24 inquiries concerning the licensees of the certifying board,
25 however, authorized representatives from the Board of Medical
26 Examiners may access the database to inquire about certified
27 registered nurse practitioners (CRNPs), or certified nurse

1 midwives (CNMs) that hold a Qualified Alabama Controlled
2 Substances Registration Certificate (QACSC).

3 "(2) A licensed practitioner approved by the
4 department who has authority to prescribe, dispense, or
5 administer controlled substances, provided, however, that such
6 access shall be limited to information concerning an assistant
7 to physician with a Qualified Alabama Controlled Substances
8 Registration Certificate over whom the practitioner exercises
9 physician supervision, a CRNP and a CNM with a QACSC over whom
10 the practitioner exercises professional oversight and
11 direction pursuant to an approved collaborative practice
12 agreement, and a current or prospective patient of the
13 practitioner. Practitioners shall have no requirement or
14 obligation to access or check the information in the
15 controlled substances database prior to prescribing,
16 dispensing, or administering medications or as part of their
17 professional practice.

18 "(3) A licensed assistant to physician approved by
19 the department who is authorized to prescribe, administer, or
20 dispense pursuant to a ~~Qualified Alabama Controlled Substances~~
21 ~~Registration Certificate~~ QACSC; provided, however, that such
22 access shall be limited to information concerning a current or
23 prospective patient of the assistant to physician.

24 "(4) A licensed certified registered nurse
25 practitioner or a licensed certified nurse midwife approved by
26 the department who is authorized to prescribe, administer, or
27 dispense pursuant to a QACSC; provided, however, that such

1 access shall be limited to information concerning a current or
2 prospective patient of the CRNP or CNM.

3 ~~"(4)(5)~~ A licensed pharmacist approved by the
4 department, provided, however, that such access is limited to
5 information related to the patient or prescribing practitioner
6 designated on a controlled substance prescription that a
7 pharmacist has been asked to fill. Pharmacists shall have no
8 requirement or obligation to access or check the information
9 in the controlled substances database prior to dispensing or
10 administering medications or as part of their professional
11 practices.

12 ~~"(5)(6)~~ State and local law enforcement authorities
13 as authorized under Section 20-2-91, and federal law
14 enforcement authorities authorized to access prescription
15 information upon application to the department accompanied by
16 an affidavit stating probable cause for the use of the
17 requested information.

18 ~~"(6)(7)~~ Employees of the department and consultants
19 engaged by the department for operational and review purposes.

20 ~~"(7)(8)~~ The prescription drug monitoring program of
21 any of the other states or territories of the United States,
22 if recognized by the Alliance for Prescription Drug Monitoring
23 Programs under procedures developed by the United States
24 Department of Justice or the Integrated Justice Information
25 Systems Institute or successor entity subject to or consistent
26 with limitations for access prescribed by this chapter for the
27 Alabama Prescription Drug Monitoring Program.

1 "§20-2-217.

2 "There is hereby assessed a surcharge in the amount
3 of ten dollars (\$10) per year on the controlled substance
4 registration certificate of each licensed medical, dental,
5 podiatric, optometric, and veterinary medicine practitioner
6 authorized to prescribe or dispense controlled substances and
7 on the Qualified Alabama Controlled Substances Registration
8 Certificate (QACSC) of each licensed assistant to physician,
9 certified registered nurse practitioner, or certified nurse
10 midwife. This surcharge shall be effective for every
11 practitioner certificate and every Qualified Alabama
12 Controlled Substances Registration Certificate (QACSC) issued
13 or renewed ~~on or after August 1, 2004,~~ shall be in addition to
14 any other fees collected by the certifying boards, and shall
15 be collected by each of the certifying boards and remitted to
16 the department at such times and in such manner as designated
17 in the regulations of the department. The proceeds of the
18 surcharge assessed herein shall be used exclusively for the
19 development, implementation, operation, and maintenance of the
20 controlled substances prescription database."

21 Section 4. This act shall become effective on the
22 first day of the fifth month following its passage and
23 approval by the Governor, or its otherwise becoming law.