

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

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To add 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, to Chapter 2 of
14 Title 20 of the Code of Alabama 1975, to allow for the
15 prescribing of certain schedules of controlled substances by
16 certified registered nurse practitioners (CRNP) and certified
17 nurse midwives (CNM) with collaborative practice agreements;
18 to provide for the establishment of qualifications required
19 for certified registered nurse practitioners and certified
20 nurse midwives to obtain a Qualified Alabama Controlled
21 Substances Registration Certificate (QACSC); to provide for
22 prescriptive, administering, and dispensing authority of CRNPs
23 and CNMs in possession of a QACSC; to provide for the
24 establishment of the Board of Medical Examiners (board) as the
25 certifying board for the registration and approval of a CRNP
26 and CNM to obtain or renew a QACSC; to establish an advisory
27 committee to comment on proposed rules; to authorize the board

1 to adopt rules concerning the application procedures, fees,
2 issuance, restriction, limitation, suspension, or revocation
3 of a QACSC and for the conduct of hearings regarding the same;
4 to provide for grounds for the denial, restriction,
5 limitation, suspension, or revocation of a QACSC; to provide
6 for an appeals process for a CRNP or CNM adversely affected by
7 an order of the board denying an application for or
8 restricting, limiting or suspending or revoking a QACSC; to
9 provide for the board to charge and collect fees, congruent
10 with other mid-level providers in Alabama, to defray expenses
11 incurred in the registration of CRNPs and CNMs, and the
12 issuance, restriction, limitation, suspension or revocation of
13 a QACSC to provide immunity to any member of the board, its
14 agents, employees, consultants, or attorneys regarding
15 investigations or proceedings to restrict, limit, suspend, or
16 revoke a QACSC; to add a new Article 12 to Chapter 2 of Title
17 20, Code of Alabama 1975, consisting of Section 20-2-260, to
18 allow a person who holds a Qualified Alabama Controlled
19 Substances Registration Certificate (QACSC) to be issued a
20 Limited Purpose Schedule II Permit to be used in limited
21 specific circumstances; and to amend Sections 20-2-214 and
22 20-2-217 of the Code of Alabama 1975, relating to the
23 Controlled Substances Prescription Database.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. A new Article 11 consisting of Sections
26 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,
27 20-2-256, 20-2-257, 20-2-258, and 20-2-259, is added to

1 Chapter 2, Title 20 of the Code of Alabama 1975, to read as
2 follows:

3 ARTICLE 11

4 Prescribing of Certain Schedules of Controlled
5 Substances by Certified Registered Nurse Practitioners and
6 Certified Nurse Midwives.

7 §20-2-250.

8 As used in this article, the following words shall
9 have the following meanings:

10 (1) ADMINISTER. The direct application of a
11 controlled substance whether by injection, inhalation,
12 ingestion, or any other means, to the body of a patient by any
13 of the following:

14 a. A collaborating physician or, in his or her
15 presence, his or her authorized agent.

16 b. A certified registered nurse practitioner or
17 certified nurse midwife.

18 c. The patient at the direction and in the presence
19 of the collaborating physician, certified registered nurse
20 practitioner, or certified nurse midwife.

21 (2) BOARD. The Board of Medical Examiners of the
22 State of Alabama.

23 (3) CERTIFIED NURSE MIDWIFE or CNM. An advanced
24 practice nurse who is subject to a collaborative practice
25 agreement with a collaborating physician pursuant to Title 34,
26 Chapter 21, Article 5, and who has advanced knowledge and
27 skills relative to the management of women's health care

1 focusing on pregnancy, childbirth, the postpartum period, care
2 of the newborn, family planning, and gynecological needs of
3 women, within a health care system that provides for
4 consultation, collaborative management, or referral as
5 indicated by the health status of the patient.

6 (4) CERTIFIED REGISTERED NURSE PRACTITIONER or CRNP.
7 An advanced practice nurse who is subject to a collaborative
8 practice agreement with a collaborating physician pursuant to
9 Title 34, Chapter 21, Article 5, and who has advanced
10 knowledge and skills in the delivery of nursing services
11 within a health care system that provides for consultation,
12 collaborative management, or referral as indicated by the
13 health status of the patient.

14 (5) COLLABORATING PHYSICIAN. A doctor of medicine or
15 doctor of osteopathy licensed to practice medicine in Alabama
16 who agrees in writing to practice in collaboration with one or
17 more certified registered nurse practitioners or certified
18 nurse midwives in accordance with Title 34, Chapter 21,
19 Article 5, and the rules and regulations adopted by the Board
20 of Medical Examiners and the Board of Nursing.

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

23 (7) PRESCRIPTION. Any order for a controlled
24 substance written or signed or transmitted by word of mouth,
25 telephone, telegraph, closed circuit television, or other
26 means of communication by a legally competent collaborating
27 physician, certified registered nurse practitioner, or

1 certified nurse midwife authorized by law to prescribe and
2 administer the drug which is intended to be filled,
3 compounded, or dispensed by a pharmacist.

4 (8) QACSC. A Qualified Alabama Controlled Substances
5 Registration Certificate.

6 §20-2-251.

7 (a) The Board of Medical Examiners is hereby
8 designated as the certifying board for the registration and
9 approval of a certified registered nurse practitioner (CRNP)
10 or a certified nurse midwife (CNM) in obtaining or renewing a
11 Qualified Alabama Controlled Substances Registration
12 Certificate (QACSC). The board may adopt regulations
13 concerning the application procedures, fees, and grounds for
14 the restriction, limitation, suspension, or revocation of a
15 QACSC, excluding the charge of expenses for conducting an
16 investigation or expenses of a hearing, and to provide for
17 hearings in connection with the same. The board shall
18 establish a unique QACSC number that identifies the particular
19 applicant as a certified registered nurse practitioner or
20 certified nurse midwife with a valid QACSC. However, nothing
21 in this act shall permit the board to encroach on the powers,
22 duties, and authority of the Board of Nursing in carrying out
23 its legally authorized functions. The Board of Nursing shall
24 remain the sole licensing and disciplinary authority for CRNPs
25 and CNMs.

26 (b) An advisory committee shall be created to
27 comment on proposed rules.

1 (c) The board and its agents, attorneys, or
2 investigators shall be permitted access to the records of any
3 CRNP or CNM, including patient records, which would relate to
4 a request for a QACSC, a renewal of a QACSC, or a possible
5 violation of any provision of the Alabama Uniform Controlled
6 Substances Act, this article, or applicable regulations of the
7 board.

8 (d) (1) The board may establish protocols,
9 formularies, or medical regimens which relate to, govern, or
10 regulate a QACSC, and any such protocol, formulary, or medical
11 regimen shall not be considered a rule under the Alabama
12 Administrative Procedure Act.

13 (2) The formulary of controlled substances that may
14 be prescribed by CRNPs and CNMs shall be approved by the
15 certifying board upon the recommendation of the joint practice
16 committee established by Article 5, commencing with Section
17 34-21-80, Chapter 21, Title 34, but the formulary shall not be
18 considered a rule under the Alabama Administrative Procedure
19 Act.

20 §20-2-252.

21 The Board of Medical Examiners may grant a Qualified
22 Alabama Controlled Substances Registration Certificate (QACSC)
23 to a certified registered nurse practitioner (CRNP) or
24 certified nurse midwife (CNM) who:

25 (1) Is practicing in accordance with this article,
26 Title 34, Chapter 21, Article 5, and all rules and regulations

1 pertaining to collaboration between a qualified physician and
2 a qualified CRNP or a CNM.

3 (2) Submits proof of successful completion of a
4 course or courses approved by the board which includes
5 advanced pharmacology and prescribing trends relating to
6 controlled substances and which is consistent with the same
7 requirements for other mid-level providers.

8 (3) Provides accurate and complete documentation of
9 12 or more months of active, clinical practice with one or
10 more collaborative practices agreement which is governed by
11 Title 34, Chapter 21, Article 5 and which has received final
12 approval from the Board of Medical Examiners and the Alabama
13 Board of Nursing. Temporary approval practice and provisional
14 approval practice shall not be used or considered to meet the
15 requirement of 12 or more months of active, clinical practice.

16 §20-2-253.

17 (a) Upon receipt of a Qualified Alabama Controlled
18 Substances Registration Certificate (QACSC) and a valid
19 registration number issued by the United States Drug
20 Enforcement Administration, a certified registered nurse
21 practitioner (CRNP) or certified nurse midwife (CNM) may
22 prescribe, administer, authorize for administration, or
23 dispense only those controlled substances listed in Schedules
24 III, IV, and V of Article 2, Chapter 2, of this title in
25 accordance with rules adopted by the Board of Medical
26 Examiners and any protocols, formularies, and medical regimens
27 established by the board for regulation of a QACSC.

1 (b) A CRNP or a CNM shall not utilize his or her
2 QACSC for the purchasing, obtaining, maintaining, or ordering
3 of any stock supply or inventory of any controlled substance
4 in any form.

5 (c) A CRNP or a CNM authorized to prescribe,
6 administer, or dispense controlled substances in accordance
7 with this article may not prescribe, administer, or dispense
8 any controlled substance to himself, herself, or his or her
9 spouse, child, or parent.

10 §20-2-254.

11 The Board of Medical Examiners may deny an
12 application of a certified registered nurse practitioner
13 (CRNP) or a certified nurse midwife (CNM) requesting a
14 Qualified Alabama Controlled Substances Registration
15 Certificate (QACSC), deny a request for a renewal of a QACSC,
16 or initiate action against the QACSC of a CRNP or a CNM
17 possessing a QACSC based on the following grounds:

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

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

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

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

1 (5) Suspension or revocation of the registration
2 number issued to the CRNP or CNM by the United States Drug
3 Enforcement Administration.

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

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

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

13 §20-2-255.

14 (a) Any hearing regarding the issuance, restriction,
15 limitation, suspension or revocation of a Qualified Alabama
16 Controlled Substances Registration Certificate (QACSC) held by
17 a certified registered nurse practitioner or a certified nurse
18 midwife for any violations of this article shall be before the
19 Board of Medical Examiners.

20 (b) The board shall have the authority to restrict,
21 suspend, or revoke a QACSC, whenever a CRNP or a CNM is found
22 guilty on the basis of substantial evidence of any of the acts
23 or offenses enumerated in Section 20-2-254. The board shall
24 also have the authority to reinstate or to deny reinstatement
25 of a QACSC.

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

4 (d) The board shall promptly notify the Drug
5 Enforcement Administration of the United States Department of
6 Justice and the Alabama Board of Nursing of all orders
7 suspending or revoking a QACSC of a CRNP or a CNM.

8 (e) Any hearing conducted before the board in
9 accordance with this section shall be considered a contested
10 case under the Alabama Administrative Procedure Act, and shall
11 be conducted in accordance with the requirements of this
12 article.

13 §20-2-256.

14 (a) A certified registered nurse practitioner (CRNP)
15 or certified nurse midwife (CNM) adversely affected by an
16 order of the Board of Medical Examiners denying an application
17 for a Qualified Alabama Controlled Substances Registration
18 Certificate (QACSC) or the renewal of a QACSC may obtain
19 judicial review thereof by filing a written petition for
20 review with the Circuit Court of Montgomery County in
21 accordance with Section 41-22-20.

22 (b) A CRNP or a CNM adversely affected by an order
23 of the board suspending, revoking, or restricting a QACSC,
24 whether or not such suspension, revocation, or restriction is
25 limited; or denying reinstatement of a QACSC, may obtain
26 judicial review thereof by filing a written petition for

1 review with the Circuit Court of Montgomery County in
2 accordance with Section 41-22-20.

3 (c) The following procedures shall take precedence
4 over subsection (c) of Section 41-22-20 relating to the
5 issuance of a stay of any order of the board suspending,
6 revoking, or restricting a QACSC. The suspension, revocation,
7 or restriction of a QACSC shall be given immediate effect and
8 no stay or supersedeas shall be granted pending judicial
9 review of a decision by the board to suspend, revoke, or
10 restrict a QACSC unless a reviewing court, upon proof by the
11 party seeking judicial review, finds in writing that the
12 action of the board was taken without statutory authority, was
13 arbitrary or capricious, or constituted a gross abuse of
14 discretion.

15 (d) From the judgment of the circuit court, either
16 the board or any affected party who invoked judicial review
17 may obtain a review of any final judgment of the circuit court
18 under Section 41-22-21. No security shall be required of the
19 board.

20 §20-2-257.

21 The Board of Medical Examiners may charge and
22 collect fees to defray expenses incurred in the registration
23 and issuance of a Qualified Alabama Controlled Substances
24 Registration Certificate (QACSC) and the administration of
25 this article shall be the same as other mid-level providers.
26 The types and amounts of fees shall be established in rules

1 adopted by the board. The fees shall be retained by the board
2 and may be expended for the general operation of the board.

3 §20-2-258.

4 Any member of the Board of Medical Examiners, any
5 agent, employee, consultant, or attorney of the board, any
6 person making any report or rendering any opinion or supplying
7 any evidence or information or offering any testimony to the
8 board in connection with any investigation or hearing
9 conducted by the board as authorized in this article, shall be
10 immune from any lawsuit or legal proceeding for any conduct in
11 the course of his or her official duties with respect to such
12 investigations or hearings.

13 §20-2-259.

14 The Board of Medical Examiners may adopt rules
15 necessary to carry out the intent, purposes, and provisions of
16 this article.

17 Section 2. A new Article 12, consisting of Section
18 20-2-260, is added to Chapter 2, Title 20 of the Code of
19 Alabama 1975, to read as follows:

20 Article 12. Limited Purpose Schedule II Permit.

21 §20-2-260.

22 (a) The Board of Medical Examiners may at any future
23 date it chooses create a Limited Purpose Schedule II Permit
24 (LPSP), and assess fees associated with the permit, that,
25 along with any other necessary registration, may permit
26 assistants to physicians, certified registered nurse
27 practitioners, or certified nurse midwives to lawfully

1 prescribe, administer, authorize for administration, or
2 dispense only those controlled substances listed in Schedule
3 II substances of Article 2 of Chapter 2 of this title in
4 accordance, as specified and limited by the permit, with rules
5 adopted by the board and any protocols, formularies, and
6 medical regimens established by the board for regulation of a
7 LPSP. Any protocols, formularies, and medical regimens shall
8 not be considered administrative rules under the Alabama
9 Administrative Procedure Act.

10 (b) An assistant to physician, certified registered
11 nurse practitioner, or certified nurse midwife shall not
12 utilize his or her LPSP for the purchasing, obtaining,
13 maintaining, or ordering of any stock supply or inventory of
14 any controlled substance in any form.

15 (c) An assistant to physician, certified registered
16 nurse practitioner, or certified nurse midwife authorized to
17 prescribe, administer, or dispense controlled substances in
18 accordance with this article shall not prescribe, administer,
19 or dispense any controlled substance to his or her own self,
20 spouse, child, or parent.

21 (d) The board may not permit assistants to
22 physicians, certified registered nurse practitioners, or
23 certified nurse midwives to lawfully prescribe, administer,
24 authorize for administration, or dispense all controlled
25 substances listed in Schedule II of Article 2 of Chapter 2 of
26 this title. It is the intent of this article, if and when the
27 board chooses to use this authority at some future date, that

1 the LPSP may be used only at the board's discretion and as
2 limited by the board to specific circumstances and specific
3 drugs.

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

6 "§20-2-214.

7 "The following persons or entities shall be
8 permitted access to the information in the controlled
9 substances database, subject to the limitations indicated
10 below:

11 "(1) Authorized representatives of the certifying
12 boards, provided, however, that access shall be limited to
13 inquiries concerning the licensees of the certifying board,
14 however, authorized representatives from the Board of Medical
15 Examiners may access the database to inquire about certified
16 registered nurse practitioners (CRNPs), or certified nurse
17 midwives (CNMs) that hold a Qualified Alabama Controlled
18 Substances Registration Certificate (QACSC).

19 "(2) A licensed practitioner approved by the
20 department who has authority to prescribe, dispense, or
21 administer controlled substances, provided, however, that such
22 access shall be limited to information concerning an assistant
23 to physician with a Qualified Alabama Controlled Substances
24 Registration Certificate over whom the practitioner exercises
25 physician supervision, a CRNP and a CNM with a QACSC over whom
26 the practitioner exercises professional oversight and
27 direction pursuant to an approved collaborative practice

1 agreement, and a current or prospective patient of the
2 practitioner. Practitioners shall have no requirement or
3 obligation to access or check the information in the
4 controlled substances database prior to prescribing,
5 dispensing, or administering medications or as part of their
6 professional practice.

7 "(3) A licensed assistant to physician approved by
8 the department who is authorized to prescribe, administer, or
9 dispense pursuant to a ~~Qualified Alabama Controlled Substances~~
10 ~~Registration Certificate~~ QACSC; provided, however, that such
11 access shall be limited to information concerning a current or
12 prospective patient of the assistant to physician.

13 "(4) A licensed certified registered nurse
14 practitioner or a licensed certified nurse midwife approved by
15 the department who is authorized to prescribe, administer, or
16 dispense pursuant to a QACSC; provided, however, that such
17 access shall be limited to information concerning a current or
18 prospective patient of the CRNP or CNM.

19 "~~(4)~~ (5) A licensed pharmacist approved by the
20 department, provided, however, that such access is limited to
21 information related to the patient or prescribing practitioner
22 designated on a controlled substance prescription that a
23 pharmacist has been asked to fill. Pharmacists shall have no
24 requirement or obligation to access or check the information
25 in the controlled substances database prior to dispensing or
26 administering medications or as part of their professional
27 practices.

1 "~~(5)~~(6) State and local law enforcement authorities
2 as authorized under Section 20-2-91, and federal law
3 enforcement authorities authorized to access prescription
4 information upon application to the department accompanied by
5 an affidavit stating probable cause for the use of the
6 requested information.

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

9 "~~(7)~~(8) The prescription drug monitoring program of
10 any of the other states or territories of the United States,
11 if recognized by the Alliance for Prescription Drug Monitoring
12 Programs under procedures developed by the United States
13 Department of Justice or the Integrated Justice Information
14 Systems Institute or successor entity subject to or consistent
15 with limitations for access prescribed by this chapter for the
16 Alabama Prescription Drug Monitoring Program.

17 "§20-2-217.

18 "There is hereby assessed a surcharge in the amount
19 of ten dollars (\$10) per year on the controlled substance
20 registration certificate of each licensed medical, dental,
21 podiatric, optometric, and veterinary medicine practitioner
22 authorized to prescribe or dispense controlled substances and
23 on the Qualified Alabama Controlled Substances Registration
24 Certificate (QACSC) of each licensed assistant to physician,
25 certified registered nurse practitioner, or certified nurse
26 midwife. This surcharge shall be effective for every
27 practitioner certificate and every Qualified Alabama

1 Controlled Substances Registration Certificate (QACSC) issued
2 or renewed ~~on or after August 1, 2004,~~ shall be in addition to
3 any other fees collected by the certifying boards, and shall
4 be collected by each of the certifying boards and remitted to
5 the department at such times and in such manner as designated
6 in the regulations of the department. The proceeds of the
7 surcharge assessed herein shall be used exclusively for the
8 development, implementation, operation, and maintenance of the
9 controlled substances prescription database."

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

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Senate

Read for the first time and referred to the Senate
committee on Health..... 19-FEB-13

Read for the second time and placed on the calen-
dar 1 amendment..... 05-MAR-13

Read for the third time and passed as amended 16-APR-13

Yeas 27
Nays 1

Patrick Harris
Secretary