

1 HB754
2 137860-3
3 By Representatives Wren and Boothe
4 RFD: Health
5 First Read: 26-APR-12

2
3
4
5
6
7
8 SYNOPSIS: This bill would allow for the prescribing of
9 certain schedules of controlled substances by
10 certified registered nurse practitioners (CRNP) and
11 certified nurse midwives (CNM).

12 This bill would establish qualifications for
13 CRNPs and CNMs to obtain a Qualified Alabama
14 Controlled Substances Registration Certificate
15 (QACSC); provide the Board of Medical Examiners
16 shall be the certifying board; authorize the board
17 to adopt rules; provide criteria for certifying or
18 denying a certificate; provide an appeals process,
19 authorize fees and charges; and provide certain
20 immunity to the board for disciplinary actions.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To add a new Article 11, consisting of Sections
27 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,

1 20-2-256, 20-2-257, 20-2-258, and 20-2-259, to Chapter 2 of
2 Title 20 of the Code of Alabama 1975, to allow for the
3 prescribing of certain schedules of controlled substances by
4 certified registered nurse practitioners (CRNP) and certified
5 nurse midwives (CNM) with collaborative practice agreements;
6 to provide for the establishment of qualifications required
7 for certified registered nurse practitioners and certified
8 nurse midwives to obtain a Qualified Alabama Controlled
9 Substances Registration Certificate (QACSC); to provide for
10 prescriptive, administering, and dispensing authority of CRNPs
11 and CNMs in possession of a QACSC; to provide for the
12 establishment of the Board of Medical Examiners as the
13 certifying board for the registration and approval of a CRNP
14 and CNM to obtain or renew a QACSC; to provide for
15 authorization of the board to adopt rules concerning the
16 application procedures, fees, fines, punishment, and conduct
17 for any disciplinary hearings for CRNPs and CNMs applying for
18 or in possession of a QACSC; to provide for grounds for denial
19 of applications for and grounds for disciplinary action
20 against a QACSC; to provide for an appeals process for a CRNP
21 or CNM adversely affected by an order of the board denying an
22 application for or the renewal of or suspending, revoking, or
23 restricting, or assessing an administrative fine against a
24 QACSC; to provide for the board to charge and collect fees,
25 costs, and expenses to defray expenses incurred in the
26 registration and issuance of a QACSC and in connection with
27 disciplinary proceedings; to provide immunity to any member of

1 the board, its agents, employees, consultants, or attorneys
2 regarding investigations or disciplinary proceedings
3 pertaining to QACSC; and to amend Sections 20-2-214 and
4 20-2-217 of the Code of Alabama 1975, relating to the
5 Controlled Substances Prescription Database.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. New Article 11 consisting of Sections
8 20-2-250, 20-2-251, 20-2-252, 20-2-253, 20-2-254, 20-2-255,
9 20-2-256, 20-2-257, 20-2-258, and 20-2-259, is added to
10 Chapter 2, Title 20 of the Code of Alabama 1975, to read as
11 follows:

12 ARTICLE 11

13 Prescribing of Certain Schedules of Controlled
14 Substances by Certified Registered Nurse Practitioners and
15 Certified Nurse Midwives.

16 §20-2-250.

17 As used in this article, the following words shall
18 have the following meanings:

19 (1) ADMINISTER. The direct application of a
20 controlled substance whether by injection, inhalation,
21 ingestion, or any other means, to the body of a patient by any
22 of the following:

23 a. A collaborating physician or, in his or her
24 presence, his or her authorized agent.

25 b. A certified registered nurse practitioner or
26 certified nurse midwife.

1 c. The patient at the direction and in the presence
2 of the collaborating physician, certified registered nurse
3 practitioner, or certified nurse midwife.

4 (2) BOARD. The Board of Medical Examiners of the
5 State of Alabama.

6 (3) CERTIFIED NURSE MIDWIFE. An advanced practice
7 nurse who is subject to a collaborative practice agreement
8 with a collaborating physician pursuant to Title 34, Chapter
9 21, Article 5, and who has advanced knowledge and skills
10 relative to the management of women's health care focusing on
11 pregnancy, childbirth, the postpartum period, care of the
12 newborn, family planning, and gynecological needs of women,
13 within a health care system that provides for consultation,
14 collaborative management, or referral as indicated by the
15 health status of the patient.

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

24 (5) COLLABORATING PHYSICIAN. A doctor of medicine or
25 doctor of osteopathy licensed to practice medicine in Alabama
26 who agrees in writing to practice in collaboration with one or
27 more certified registered nurse practitioners or certified

1 nurse midwives in accordance with Title 34, Chapter 21,
2 Article 5, and the rules and regulations adopted by the Board
3 of Medical Examiners and the Board of Nursing.

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

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

14 §20-2-251.

15 (a) The Board of Medical Examiners is hereby
16 designated as the certifying board for the registration and
17 approval of a certified registered nurse practitioner or
18 certified nurse midwife in obtaining or renewing a Qualified
19 Alabama Controlled Substances Registration Certificate
20 (QACSC). The board is authorized to adopt regulations
21 concerning the application procedures, fees, fines,
22 punishments, and conduct of any disciplinary hearings for such
23 applicants. The board shall establish a unique QACSC number
24 that identifies the particular applicant as a certified
25 registered nurse practitioner or certified nurse midwife with
26 a valid QACSC.

1 (b) The Board of Medical Examiners and its agents,
2 attorneys, or investigators shall be permitted access to the
3 records of any certified registered nurse practitioner or
4 certified nurse midwife, including patient records, which
5 would relate to a request for a QACSC, a renewal of a QACSC or
6 the possible violations of any provision of the Alabama
7 Uniform Controlled Substances Act, this article, or applicable
8 regulations of the Board of Medical Examiners.

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

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

22 §20-2-252.

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

1 (1) Is practicing in accordance with this article,
2 Title 34, Chapter 21, Article 5, and all rules and regulations
3 pertaining to collaboration between a qualified physician and
4 a qualified certified registered nurse practitioner or
5 certified nurse midwife.

6 (2) Submits proof of successful completion of a
7 course or courses approved by the Board of Medical Examiners
8 which includes advanced pharmacology and prescribing trends
9 relating to controlled substances.

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

18 §20-2-253.

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

1 protocols, formularies, and medical regimens established by
2 the board for regulation of a QACSC.

3 (b) A certified registered nurse practitioner or
4 certified nurse midwife shall not utilize his or her QACSC for
5 the purchasing, obtaining, maintaining, or ordering of any
6 stock supply or inventory of any controlled substance in any
7 form.

8 (c) A certified registered nurse practitioner or
9 certified nurse midwife authorized to prescribe, administer,
10 or dispense controlled substances in accordance with this
11 article may not prescribe, administer, or dispense any
12 controlled substance to himself, herself, or his or her
13 spouse, child, or parent.

14 §20-2-254.

15 The Board of Medical Examiners may deny an
16 application of a certified registered nurse practitioner or
17 certified nurse midwife requesting a Qualified Alabama
18 Controlled Substances Registration Certificate (QACSC), deny a
19 request for a renewal of a QACSC, or initiate disciplinary
20 action against a certified registered nurse practitioner or
21 certified nurse midwife possessing a QACSC based on the
22 following grounds:

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

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

1 (3) Conviction of a crime or offense which affects
2 the ability of the certified registered nurse practitioner or
3 certified nurse midwife to practice with due regard for the
4 health or safety of his or her patients.

5 (4) Prescribing a drug or utilizing a QACSC in such
6 a manner as to endanger the health of any person or patient of
7 the certified registered nurse practitioner, certified nurse
8 midwife, or collaborating physician.

9 (5) Suspension or revocation of the registration
10 number issued to the certified registered nurse practitioner
11 or certified nurse midwife by the United States Drug
12 Enforcement Administration.

13 (6) Excessive dispensing or prescribing of any drug
14 to any person or patient of the certified registered nurse
15 practitioner, certified nurse midwife, or collaborating
16 physician.

17 (7) Unfitness or incompetence due to the use of or
18 dependence on alcohol, chemicals, or any mood-altering drug to
19 such an extent as to render the certified registered nurse
20 practitioner or certified nurse midwife unsafe or unreliable
21 to prescribe drugs or to hold a QACSC.

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

24 §20-2-255.

25 (a) Any hearing for disciplinary action against a
26 certified registered nurse practitioner or certified nurse
27 midwife holding a valid Qualified Alabama Controlled

1 Substances Registration Certificate (QACSC) for violations of
2 this article shall be before the Board of Medical Examiners.

3 (b) The board shall have the authority to restrict,
4 suspend, or revoke a QACSC, or to assess an administrative
5 fine against a QACSC whenever a certified registered nurse
6 practitioner or a certified nurse midwife shall be found
7 guilty on the basis of substantial evidence of any of the acts
8 or offenses enumerated in Section 20-2-254. The board shall
9 also have the authority to reinstate or to deny reinstatement
10 of a QACSC.

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

14 (d) The Board of Medical Examiners shall promptly
15 notify the Drug Enforcement Administration of the United
16 States Department of Justice of all orders suspending or
17 revoking a QACSC of a certified registered nurse practitioner
18 or certified nurse midwife.

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

24 §20-2-256.

25 (a) A certified registered nurse practitioner or
26 certified nurse midwife adversely affected by an order of the
27 Board of Medical Examiners denying an application for a

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

6 (b) A certified registered nurse practitioner or
7 certified nurse midwife adversely affected by an order of the
8 board suspending, revoking, or restricting a QACSC, whether or
9 not such suspension, revocation, or restriction is limited;
10 assessing an administrative fine; or denying reinstatement of
11 a QACSC, may obtain judicial review thereof by filing a
12 written petition for review with the Circuit Court of
13 Montgomery County in 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 of Medical
17 Examiners suspending, revoking, or restricting a QACSC. The
18 suspension, revocation, or restriction of a QACSC shall be
19 given immediate effect and no stay or supersedeas shall be
20 granted pending judicial review of a decision by the board to
21 suspend, revoke, or restrict a QACSC unless a reviewing court,
22 upon proof by the party seeking judicial review, finds in
23 writing that the action of the board was taken without
24 statutory authority, was arbitrary or capricious, or
25 constituted a gross abuse of discretion.

26 (d) From the judgment of the circuit court, either
27 the Board of Medical Examiners or the affected party who

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

4 §20-2-257.

5 (a) 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. The types and amounts of fees shall be
10 established in rules adopted by the board. The fees shall be
11 retained by the board and may be expended for the general
12 operation of the board.

13 (b) The Board of Medical Examiners may require a
14 certified registered nurse practitioner or certified nurse
15 midwife who has been found to be in violation of this article
16 or whose application for a QACSC or its renewal or
17 reinstatement has been denied, to pay the administrative
18 costs, fees, and expenses of the board incurred in connection
19 with any proceedings before the board referred to in Section
20 20-2-255 or in connection with any investigation of the board
21 to determine eligibility of an applicant for a QACSC
22 including, but not limited to, the actual costs of independent
23 medical review and expert testimony, fees, and expenses paid
24 to outside counsel by the board, deposition costs, travel
25 expenses for board staff, charges incurred for obtaining
26 documentary evidence and such other categories of expenses as
27 may be prescribed in rules published by the board. Payment of

1 any such costs, fees, or expenses ordered by the board shall
2 be made and enforced in the same manner as an administrative
3 fine.

4 (c) Any administrative fine assessed by the board
5 shall be paid to the board and shall not exceed one thousand
6 dollars (\$1,000) for each violation of any provision of this
7 article, or any rule promulgated by the board. Any
8 administrative fine collected by the board may be expended for
9 the general operation of the board.

10 §20-2-258.

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

20 §20-2-259.

21 The Board of Medical Examiners may adopt rules
22 necessary to carry out the intent, purposes, and provisions of
23 this article.

24 Section 2. Sections 20-2-214 and 20-2-217 of the
25 Code of Alabama 1975, are amended to read as follows:

26 "§20-2-214.

1 "The following persons or entities shall be
2 permitted access to the information in the controlled
3 substances database, subject to the limitations indicated
4 below:

5 "(1) Authorized representatives of the certifying
6 boards, provided, however, that access shall be limited to
7 inquiries concerning the licensees of the certifying board.

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

25 "(3) A licensed assistant to physician approved by
26 the department who is authorized to prescribe, administer, or
27 dispense pursuant to a Qualified Alabama Controlled Substances

1 Registration Certificate; provided, however, that such access
2 shall be limited to information concerning a current or
3 prospective patient of the assistant to physician.

4 "(4) A licensed certified registered nurse
5 practitioner or a licensed certified nurse midwife approved by
6 the department who is authorized to prescribe, administer, or
7 dispense pursuant to a Qualified Alabama Controlled Substances
8 Registration Certificate; provided, however, that such access
9 shall be limited to information concerning a current or
10 prospective patient of the certified registered nurse
11 practitioner or certified nurse midwife.

12 ~~"(4)~~ (5) A licensed pharmacist approved by the
13 department, provided, however, that such access is limited to
14 information related to the patient or prescribing practitioner
15 designated on a controlled substance prescription that a
16 pharmacist has been asked to fill. Pharmacists shall have no
17 requirement or obligation to access or check the information
18 in the controlled substances database prior to dispensing or
19 administering medications or as part of their professional
20 practices.

21 ~~"(5)~~ (6) State and local law enforcement authorities
22 as authorized under Section 20-2-91, and federal law
23 enforcement authorities authorized to access prescription
24 information upon application to the department accompanied by
25 an affidavit stating probable cause for the use of the
26 requested information.

1 "~~(6)~~ (7) Employees of the department and consultants
2 engaged by the department for operational and review purposes.

3 "~~(7)~~ (8) The prescription drug monitoring program of
4 any of the other states or territories of the United States,
5 if recognized by the Alliance for Prescription Drug Monitoring
6 Programs under procedures developed by the United States
7 Department of Justice or the Integrated Justice Information
8 Systems Institute or successor entity subject to or consistent
9 with limitations for access prescribed by this chapter for the
10 Alabama Prescription Drug Monitoring Program.

11 "§20-2-217.

12 "There is hereby assessed a surcharge in the amount
13 of ten dollars (\$10) per year on the controlled substance
14 registration certificate of each licensed medical, dental,
15 podiatric, optometric, and veterinary medicine practitioner
16 authorized to prescribe or dispense controlled substances and
17 on the Qualified Alabama Controlled Substances Registration
18 Certificate of each licensed assistant to physician, certified
19 registered nurse practitioner, or certified nurse midwife.

20 This surcharge shall be effective for every practitioner
21 certificate and every Qualified Alabama Controlled Substances
22 Registration Certificate issued or renewed ~~on or after August~~
23 ~~1, 2004~~, shall be in addition to any other fees collected by
24 the certifying boards, and shall be collected by each of the
25 certifying boards and remitted to the department at such times
26 and in such manner as designated in the regulations of the
27 department. The proceeds of the surcharge assessed herein

1 shall be used exclusively for the development, implementation,
2 operation, and maintenance of the controlled substances
3 prescription database."

4 Section 3. This act shall become effective on the
5 first day of the fifth month following its passage and
6 approval by the Governor, or its otherwise becoming law.