

1 HB373
2 186144-3
3 By Representatives Weaver and McCutcheon
4 RFD: Health
5 First Read: 07-MAR-17

1 Section 1. This act shall be known and may be cited
2 as the Alex Hoover Act.

3 Section 2. Sections 22-8A-2, 22-8A-3, and 22-8A-7,
4 as last amended by Act 2016-96, 2016 Regular Session, Code of
5 Alabama 1975, are amended to read as follows:

6 "§22-8A-2.

7 "(a) The Legislature finds that competent adult
8 persons and qualified representatives of qualified minors have
9 the right to control the decisions relating to the rendering
10 of ~~their own~~ medical care, including, without limitation, the
11 decision to have medical procedures, life-sustaining
12 treatment, and artificially provided nutrition and hydration
13 provided, withheld, or withdrawn in instances of terminal
14 conditions and permanent unconsciousness.

15 "(b) In order that the rights of individuals may be
16 respected even after they are no longer able to participate
17 actively in decisions about themselves, the Legislature
18 hereby declares that the laws of this state shall recognize
19 the right of a competent adult person and a qualified
20 representative of a qualified minor to make a written
21 declaration instructing ~~his or her~~ a physician to provide,
22 withhold, or withdraw life-sustaining treatment and
23 artificially provided nutrition and hydration or designate by
24 lawful written form a health care proxy to make decisions on
25 behalf of the adult person, or qualified representative of a
26 qualified minor, concerning the providing, withholding, or
27 withdrawing of life-sustaining treatment and artificially

1 provided nutrition and hydration in instances of terminal
2 conditions and permanent unconsciousness. The Legislature
3 further desires to provide for the appointment of surrogate
4 decision-makers in instances where the individual has not made
5 such a designation and to allow a health care provider to
6 follow certain portable physician orders for adults and
7 qualified minors as provided for in this chapter.

8 "§22-8A-3.

9 "As used in this chapter, the following terms shall
10 have the following meanings, respectively, unless the context
11 clearly indicates otherwise:

12 "(1) ADULT. Any person 19 years of age or over.

13 "(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION.

14 A medical treatment consisting of the administration of food
15 and water through a tube or intravenous line, where the
16 recipient is not required to chew or swallow voluntarily.
17 Artificially provided nutrition and hydration does not include
18 assisted feeding, such as spoon or bottle feeding.

19 "(3) ADVANCE DIRECTIVE FOR HEALTH CARE. A writing
20 executed in accordance with Section 22-8A-4 which may include
21 a living will, the appointment of a health care proxy, or both
22 such living will and appointment of a health care proxy.

23 "(4) ATTENDING PHYSICIAN. The physician selected by,
24 or assigned to, the patient who has primary responsibility for
25 the treatment and care of the patient.

26 "(5) CARDIOPULMONARY CESSATION. A lack of pulse or
27 respiration.

1 "(6) COMPETENT ADULT. An adult who is alert, capable
2 of understanding a lay description of medical procedures and
3 able to appreciate the consequences of providing, withholding,
4 or withdrawing medical procedures.

5 "(7) DO NOT ATTEMPT RESUSCITATION (DNAR) ORDER. A
6 physician's order that resuscitative measures not be provided
7 to a person under a physician's care in the event the person
8 is found with cardiopulmonary cessation. A do not attempt
9 resuscitation order would include, without limitation,
10 physician orders written as "do not resuscitate," "do not
11 allow resuscitation," "do not allow resuscitative measures,"
12 "DNAR," "DNR," "allow natural death," or "AND." A do not
13 attempt resuscitation order must be entered with the consent
14 of the person, if the person is competent; or in accordance
15 with instructions in an advance directive if the person is not
16 competent or is no longer able to understand, appreciate, and
17 direct his or her medical treatment and has no hope of
18 regaining that ability; or with the consent of a health care
19 proxy or surrogate functioning under the provisions in this
20 chapter; or instructions by an attorney in fact under a
21 durable power of attorney that duly grants powers to the
22 attorney in fact to make those decisions described in Section
23 22-8A-4(b) (1) .

24 "(8) HEALTH CARE PROVIDER. A person who is licensed,
25 certified, registered, or otherwise authorized by the law of
26 this state to administer or provide health care in the

1 ordinary course of business or in the practice of a
2 profession.

3 "(9) HEALTH CARE PROXY. Any person designated to act
4 on behalf of an individual pursuant to Section 22-8A-4.

5 "(10) LIFE-SUSTAINING TREATMENT. Any medical
6 treatment, procedure, or intervention that, in the judgment of
7 the attending physician, when applied to the patient, would
8 serve only to prolong the dying process where the patient has
9 a terminal illness or injury, or would serve only to maintain
10 the patient in a condition of permanent unconsciousness. These
11 procedures shall include, but are not limited to, assisted
12 ventilation, cardiopulmonary resuscitation, renal dialysis,
13 surgical procedures, blood transfusions, and the
14 administration of drugs and antibiotics. Life-sustaining
15 treatment shall not include the administration of medication
16 or the performance of any medical treatment where, in the
17 opinion of the attending physician, the medication or
18 treatment is necessary to provide comfort or to alleviate
19 pain.

20 "(11) LIVING WILL. A witnessed document in writing,
21 voluntarily executed by the declarant, that gives directions
22 and may appoint a health care proxy, in accordance with the
23 requirements of Section 22-8A-4.

24 "(12) PALLIATIVE AND END OF LIFE INDIVIDUAL HEALTH
25 PLAN. A document that outlines health care to be provided to a
26 qualified minor, in a school setting, developed by a school
27 nurse in conjunction with the qualified representative,

1 pursuant to Section 22-8A-16. A palliative and end of life
2 individual health plan shall include a copy of the physician
3 order for PPEL care and may contain any other directive or
4 order executed pursuant to this chapter on behalf of the
5 qualified minor.

6 ~~"(12)~~ (13) PERMANENT UNCONSCIOUSNESS. A condition
7 that, to a reasonable degree of medical certainty:

8 "a. Will last permanently, without improvement; and

9 "b. In which cognitive thought, sensation,
10 purposeful action, social interaction, and awareness of self
11 and environment are absent; and

12 "c. Which condition has existed for a period of time
13 sufficient, in accordance with applicable professional
14 standards, to make such a diagnosis; and

15 "d. Which condition is confirmed by a physician who
16 is qualified and experienced in making such a diagnosis.

17 ~~"(13)~~ (14) PERSON. An individual, corporation,
18 business trust, estate, trust, partnership, association, joint
19 venture, government, governmental subdivision or agency, or
20 any other legal or commercial entity.

21 ~~"(14)~~ (15) PHYSICIAN. A person licensed to practice
22 medicine and osteopathy in the State of Alabama.

23 "(16) PHYSICIAN ORDER FOR PEDIATRIC PALLIATIVE AND
24 END OF LIFE (PPEL) CARE. A form signed by the treating
25 physician of a qualified minor using the form developed by the
26 Department of Public Health, in conjunction with the
27 Governor's task force pursuant to Section 4 of the act

1 amending this section, signed by the physician directing the
2 care of the qualified minor, which when completed becomes the
3 order directing all professional caregivers with respect to
4 the extent of use of emergency medical equipment, medication,
5 and any other technological interventions available to provide
6 palliative and supportive care to the qualified minor.

7 "~~(15)~~ (17) PORTABLE PHYSICIAN DNAR ORDER. A DNAR
8 order entered in the medical record by a physician using the
9 required form designated by the State Board of Health and
10 substantiated by completion of all sections of the form.

11 "(18) QUALIFIED MINOR. An individual ranging in age
12 from birth until the age of 19 who has been diagnosed as
13 terminally ill or injured. For purposes of this chapter, a
14 qualified minor shall be considered an adult when acting
15 through a qualified representative under this chapter only as
16 permitted and set forth in this chapter.

17 "(19) QUALIFIED REPRESENTATIVE. Any of the following
18 with regard to a qualified minor:

19 "a. A parent of a qualified minor whose medical
20 decision making rights have not been restricted.

21 "b. A legal guardian of a qualified minor, which may
22 include situations where the Department of Human Resources has
23 custody of a minor.

24 "c. An adult acting in loco parentis on behalf of a
25 qualified minor.

1 "~~(16)~~ (20) RESUSCITATIVE MEASURES. Those measures
2 used to restore or support cardiac or respiratory function in
3 the event of cardiopulmonary cessation.

4 "~~(17)~~ (21) SURROGATE. Any person appointed to act on
5 behalf of an individual pursuant to Section 22-8A-11.

6 "~~(18)~~ (22) TERMINALLY ILL OR INJURED PATIENT. A
7 patient whose death is imminent or whose condition, to a
8 reasonable degree of medical certainty, is hopeless unless he
9 or she is artificially supported through the use of
10 life-sustaining procedures and which condition is confirmed by
11 a physician who is qualified and experienced in making such a
12 diagnosis.

13 "§22-8A-7.

14 "(a) A competent adult may make decisions regarding
15 life-sustaining treatment and artificially provided nutrition
16 and hydration so long as that individual is able to do so. The
17 desires of an individual shall at all times supersede the
18 effect of an advance directive for health care.

19 "(b) If the individual is not competent at the time
20 of the decision to provide, withhold, or withdraw
21 life-sustaining treatment or artificially provided nutrition
22 and hydration, a living will executed in accordance with
23 Section 22-8A-4(a) or a proxy designation executed in
24 accordance with Section 22-8A-4(b) is presumed to be valid.
25 For the purpose of this chapter, a health care provider may
26 presume in the absence of actual notice to the contrary that
27 an individual who executed an advance directive for health

1 care was competent when it was executed. The fact of an
2 individual's having executed an advance directive for health
3 care shall not be considered as an indication of a declarant's
4 mental incompetency. Advanced age of itself shall not be a bar
5 to a determination of competency.

6 "(c) No physician, licensed health care
7 professional, medical care facility, other health care
8 provider, or any employee thereof who in good faith and
9 pursuant to reasonable medical standards issues or follows a
10 portable physician DNAR order or a Physician Order for PPEL
11 Care entered in the medical record pursuant to this chapter or
12 causes or participates in the providing, withholding, or
13 withdrawing of life-sustaining treatment or artificially
14 provided nutrition and hydration from a patient pursuant to a
15 living will or designated proxy made in accordance with this
16 chapter or pursuant to the directions of a duly designated
17 surrogate appointed in accordance with this chapter, in the
18 absence of actual knowledge of the revocation thereof, shall,
19 as a result thereof, be subject to criminal or civil
20 liability, or be found to have committed an act of
21 unprofessional conduct."

22 Section 3. Sections 22-8A-15, 22-8A-16, 22-8A-17,
23 and 22-8A-18 are added to the Code of Alabama 1975, to read as
24 follows:

25 §22-8A-15.

1 (a) For purposes of this chapter, a qualified
2 representative may act on behalf of a qualified minor in the
3 following circumstances:

4 (1) Executing an advance directive for health care
5 under Section 22-8A-4.

6 (2) Consenting to a DNAR order under Section
7 22-8A-4.1.

8 (3) Revoking an advanced directive for health care
9 pursuant to Section 22-8A-5.

10 (4) Executing a palliative and end of life
11 individual health plan pursuant to Section 22-8A-16.

12 (5) Acting as a designated proxy under Section
13 22-8A-6.

14 (6) Acting as a surrogate under Section 22-8A-11.

15 (b) A qualified representative shall have legal
16 rights, duties, responsibilities, and obligations to act in a
17 fiduciary capacity on behalf of a qualified minor.

18 §22-8A-16.

19 (a) As used in this section and Section 22-8A-17,
20 school means any K-12 public school, charter school, any
21 educational or correctional institution under the control of
22 the Department of Youth Services, the Alabama Institute for
23 Deaf and Blind, the Alabama School of Fine Arts, and the
24 Alabama School of Math and Science.

25 (b) As a prerequisite to executing any directives,
26 orders, or guidance on behalf of a qualified minor regarding
27 care and services in a school, a qualified representative

1 shall complete a palliative and end of life individual health
2 plan and file a copy of the plan with any school the qualified
3 minor attends.

4 (c) The form and contents of the palliative and end
5 of life individual health plan shall be developed pursuant to
6 rules promulgated by the State Board of Education, in
7 consultation with the Department of Public Health and the
8 Alabama Board of Nursing, with special consideration given to
9 meet child and family needs, as well as the needs of students
10 and staff.

11 (d) The palliative and end of life individual health
12 plan shall include a copy of the Physician Order for PPEL Care
13 and any of the following:

14 (1) A copy of any other directive or order executed
15 pursuant to this chapter on behalf of the qualified minor.

16 (2) A detailed listing of expectations of
17 non-medical care as it applies to non-medical professionals
18 and other individuals specifically addressing circumstances in
19 anticipation of the death of the qualified minor.

20 (3) A detailed plan of action for the school in the
21 event of a qualified minor's death while participating in a
22 school activity, including guidance and plans for addressing
23 the needs of other children who may witness the death of the
24 minor.

25 (4) A detailed plan of action for the school in the
26 event of a qualified minor's death while on school property or

1 at a school event, with regard to what should be done with the
2 body of the qualified minor.

3 (5) The specific types of school-sanctioned
4 activities authorized by the qualified representative in which
5 the qualified minor may participate.

6 (6) A narrative description of the desire for
7 participating in activities or organizations within the
8 community, including school-sanctioned activities at school
9 during school hours and after school hours, in which the
10 qualified minor may participate. The written desire for
11 participating in school-sanctioned activities does not
12 constitute a guarantee of participation. The qualified minor
13 shall meet the same participation requirements for
14 school-sanctioned activities as set forth for all students at
15 the school.

16 (7) An acknowledgement by the qualified
17 representative that physicians, nurses, health care providers,
18 health care facilities, schools, school boards, school board
19 members, and employees of a local board of education, and
20 other individuals acting in consultation with the school are
21 not criminally or civilly liable for following any plans,
22 guidance, or directives of the palliative and end of life
23 individual health plan.

24 (8) An acknowledgement by the qualified
25 representative that he or she has been provided information
26 about the risks and benefits of the activities as described in

1 the palliative and end of life individual health plan and how
2 the activities may affect the death of the qualified minor.

3 (9) Any other requirement that may be established by
4 rule in accordance with this chapter.

5 (e) A palliative and end of life individual health
6 plan is executed when it is completed and signed and dated by
7 all qualified representatives of the qualified minor.

8 (f) After a palliative and end of life individual
9 health plan is executed, the school, upon written consent by
10 the qualified representatives, shall notify, to the extent
11 possible, local emergency medical services of the presence of
12 a qualified minor in the school with a palliative and end of
13 life individual health plan.

14 §22-8A-17.

15 Any individual, physician, nurse, health care
16 provider, health care facility, school, city or county board
17 of education, the Board of Education for the Department of
18 Youth Services, board of education member, or employee of a
19 local board of education or school, attempting to follow a
20 palliative and end of life individual health plan or
21 directions, guidance, or instructions provided by a qualified
22 representative pursuant to a palliative and end of life
23 individual health plan shall not be subject to criminal or
24 civil liability. When interpreting this chapter, all defenses
25 and immunities herein shall inure to the benefit of those
26 individuals, physicians, nurses, health care providers, health
27 care facilities, schools, local boards of education, board of

1 education members, and employees of a local board of education
2 or school. Furthermore, no individual shall be subject to
3 criminal or civil liability for the provision of medical or
4 non-medical care or treatment or withholding of treatment of a
5 qualified minor as provided for under this chapter. This
6 protection extends to these individuals regardless of whether
7 or not the condition that causes the death is, in fact, the
8 cause of the qualified minor's death.

9 §22-8A-18.

10 (a) The State Board of Education, in consultation
11 with the Department of Public Health and the Alabama Board of
12 Nursing, shall promulgate any rules necessary to carry out
13 Section 22-8A-16 within a school setting for the care of a
14 qualified minor.

15 (b) The Department of Public Health, in consultation
16 with the State Department of Education and the Alabama Board
17 of Nursing, shall promulgate any rules necessary to carry out
18 Section 22-8A-16 outside of a school for the care of a
19 qualified minor.

20 Section 4. (a) The Department of Public Health, in
21 conjunction with the task force created pursuant to subsection
22 (b), shall promulgate rules establishing the Physician Order
23 for Pediatric Palliative and End of Life (PPEL) Care form.

24 (b) The Governor shall appoint a task force, to
25 serve for no more than two years under the supervision of the
26 Alabama Department of Public Health, to establish the

1 Physician Order for PPEL Care form. The task force shall
2 include all of the following representatives:

3 (1) A representative of urban emergency medical
4 services, appointed by the Governor.

5 (2) A representative of rural emergency medical
6 services, appointed by the Governor.

7 (3) A pediatrician caring for medically complex
8 children in an urban area, appointed by the Governor.

9 (4) A pediatrician caring for medically complex
10 children in a rural area, appointed by the Governor.

11 (5) Two pediatric specialists from any of the
12 following disciplines, appointed by the Governor: Oncology,
13 cardiology, neurology, or pulmonology.

14 (6) A pediatric ethicist, appointed by the Governor.

15 (7) A nurse, appointed by the Alabama Board of
16 Nursing.

17 (8) The Director for School Nurses of the State
18 Department of Education, or his or her designee.

19 (9) The Director Child Care Facilities of the
20 Department of Human Resources, or his or her designee.

21 (10) The State Health Officer, or his or her
22 designee.

23 (11) A pediatric advanced practice practitioner,
24 appointed by the Governor.

25 (12) Two social workers, appointed by the Governor.

26 (13) A representative of the Alabama Hospital
27 Association appointed by the association.

1 (14) A representative of Children's Hospital of
2 Alabama appointed by the hospital.

3 (15) A representative of Children's and Women's
4 Hospital at the University of South Alabama appointed by the
5 hospital.

6 (16) A representative of the Alabama State Advisory
7 Council on Palliative Care and Quality of Life appointed by
8 the organization.

9 (17) A representative of the Medical Association of
10 Alabama, appointed by the association.

11 (18) A representative of the Alabama Association of
12 School Nurses, appointed by the association.

13 (19) Two hospital chaplains appointed by the
14 Governor.

15 (20) A pediatric palliative care physician,
16 appointed by the Governor.

17 (21) A physician who practices hospital emergency
18 medicine, appointed by the Governor.

19 (22) An emergency medicine physician who practices
20 at one of the Alabama licensed pediatric specialty hospitals
21 appointed by the Governor.

22 (23) Two parents with minor children, appointed by
23 the President Pro Tempore of the Senate.

24 (24) Two parents with minor children, appointed by
25 the Speaker of the House of Representatives.

1 (c) The task force shall provide an annual report to
2 the Legislature no later than the 15th legislative day of the
3 regular session.

4 Section 5. The appointing authorities shall
5 coordinate their appointments to assure the task force
6 membership is inclusive and reflects the racial, gender,
7 geographic, urban, rural, and economic diversity of the state.

8 Section 6. This act shall become effective three
9 months following its passage and approval by the Governor, or
10 its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Health 07-MAR-17

Read for the second time and placed
on the calendar with 1 substitute
and..... 15-MAR-17

Read for the third time and passed
as amended..... 02-MAY-17

Yeas 98, Nays 0, Abstains 0

Jeff Woodard
Clerk