HB194

192624-3

By Representative Weaver

RFD: Health

First Read: 11-JAN-18
ENROLLED, An Act,

Relating to terminally ill minors; to amend Sections 22-8A-2, 22-8A-3, and 22-8A-7, Code of Alabama 1975; to add Sections 22-8A-15 to 22-8A-17, inclusive, to the Code of Alabama 1975; to create the Alex Hoover Act; to authorize the parent or legal guardian of a terminally ill or injured minor to execute, in consultation with the minor's attending physician, a directive for the medical treatment and palliative care to be provided to a terminally ill or injured minor; to require the Department of Public Health, by rule and in conjunction with a task force, to establish a form for an Order for Pediatric Palliative and End of Life (PPEL) Care to be used by medical professionals outlining medical care provided to terminally ill minors in certain circumstances; to provide immunity to health care providers who provide, withhold, or withdraw medical treatment pursuant to an Order for PPEL Care; and to establish a temporary task force to work in consultation with the Department of Public Health to establish an Order for Pediatric Palliative and End of Life (PPEL) Care form.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alex Hoover Act.
Section 2. Sections 22-8A-2, 22-8A-3, and 22-8A-7 of the Code of Alabama 1975, are amended to read as follows:

"§22-8A-2.

"The Legislature finds that competent adult persons have the right to control the decisions relating to the rendering of their own medical care, including, without limitation, the decision to have medical procedures, life-sustaining treatment, and artificially provided nutrition and hydration provided, withheld, or withdrawn in instances of terminal conditions and permanent unconsciousness. In order that the rights of individuals may be respected even after they are no longer able to participate actively in decisions about themselves, the Legislature hereby declares that the laws of this state shall recognize the right of a competent adult person to make a written declaration instructing his or her physician to provide, withhold, or withdraw life-sustaining treatment and artificially provided nutrition and hydration or designate by lawful written form a health care proxy to make decisions on behalf of the adult person concerning the providing, withholding, or withdrawing of life-sustaining treatment and artificially provided nutrition and hydration in instances of terminal conditions and permanent unconsciousness. The Legislature further desires to provide for the appointment of surrogate decision-makers in instances where the individual has not made such a designation
and to allow a health care provider to follow certain portable
physician orders and orders for pediatric and palliative and
end of life care as provided for in this chapter.

"§22-8A-3.

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

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

"(2) ARTIFICIALLY PROVIDED NUTRITION AND HYDRATION. A medical treatment consisting of the administration of food
and water through a tube or intravenous line, where the
recipient is not required to chew or swallow voluntarily.
Artificially provided nutrition and hydration does not include
assisted feeding, such as spoon or bottle feeding.

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

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

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

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

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

"(8) HEALTH CARE PROVIDER. A person who is licensed, certified, registered, or otherwise authorized by the law of this state to administer or provide health care in the
ordinary course of business or in the practice of a profession.

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

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

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

"(12) ORDER FOR PEDIATRIC PALLIATIVE AND END OF LIFE (PPEL) CARE. A directive that, once executed by the
representative of a qualified minor and entered into the record by the attending physician of the qualified minor in accordance with Section 22-8A-15, becomes the medical order for all health care providers with respect to the extent of use of emergency medical equipment and treatment, medication, and any other technological or medical interventions available to provide palliative and supportive care to the qualified minor.

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

"a. Will last permanently, without improvement; and

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

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

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

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

"(14) (15) PHYSICIAN. A person licensed to practice medicine and osteopathy in the State of Alabama.
"(15) (16) PORTABLE PHYSICIAN DNAR ORDER. A DNAR order entered in the medical record by a physician using the required form designated by the State Board of Health and substantiated by completion of all sections of the form.

"(17) QUALIFIED MINOR. An individual ranging in age from birth until the age of 19 who has been diagnosed as a terminally ill or injured patient and whose diagnosis has been confirmed by at least one additional physician who is not the patient's attending physician.

"(18) REPRESENTATIVE OF A QUALIFIED MINOR. Any of the following:

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

"b. A legal guardian of a qualified minor.

"c. A person acting as a parent, as the term is defined in Section 30-3B-102, of a qualified minor.

"(16) (19) RESUSCITATIVE MEASURES. Those measures used to restore or support cardiac or respiratory function in the event of cardiopulmonary cessation.

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

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

"§22-8A-7."

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

"(b) If the individual is not competent at the time of the decision to provide, withhold, or withdraw life-sustaining treatment or artificially provided nutrition and hydration, a living will executed in accordance with Section 22-8A-4(a) or a proxy designation executed in accordance with Section 22-8A-4(b) is presumed to be valid. For the purpose of this chapter, a health care provider may presume in the absence of actual notice to the contrary that an individual who executed an advance directive for health care was competent when it was executed. The fact of an individual's having executed an advance directive for health care shall not be considered as an indication of a declarant's mental incompetency. Advanced age of itself shall not be a bar to a determination of competency.

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

"(d) Any health care provider or health care
facility acting within the applicable standard of care who is
signing, executing, ordering, or attempting to follow the
directives of an Order for PPEL Care in compliance with this
chapter shall not be subject to criminal or civil liability
and shall not be found to have committed an act of
unprofessional conduct. Nothing in this chapter shall be
construed to establish a standard of care for physicians or
otherwise modify, amend, or supersede any provision of the
Alabama Medical Liability Act of 1987, the Alabama Medical
Liability Act of 1996, or any amendment or judicial
interpretation thereof. A health care provider or health care
facility that does not know, or could not reasonably know, that a physician's Order for PPEL Care exists may not be civilly or criminally liable for actions taken to assist a qualified minor subject to a physician's Order for PPEL Care."

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


(a) The representative of a qualified minor may execute a directive with respect to the extent of medical treatment, medication, and other interventions available to provide palliative and supportive care to the qualified minor by completing and signing an Order for PPEL Care form. Once completed and signed by the representative, the attending physician may complete and sign the executed directive and enter the directive into the medical record of the qualified minor. Once properly entered and received into the medical record, the directive is deemed a valid Order for PPEL Care; provided, however, it is the intent of this section to recognize the desires as reflected in communications, including verbal or written statements of a qualified minor and of the representative of a qualified minor with respect to the extent of medical treatment, medication, and other interventions available to provide palliative and supportive care to the qualified minor. The desires, as reflected in communications, including verbal or written statements, of a
qualified minor and representative of a qualified minor shall at all times supersede an Order for PPEL Care.

(b) The Department of Public Health, in consultation with the task force created pursuant to Section 22-8A-16, shall adopt rules not later than March 31, 2019, establishing the Order for PPEL Care form.

(c) The Department of Public Health may adopt rules to implement this section.

§22-8A-16.

(a) A task force is created to serve under the supervision of the Alabama Department of Public Health, to establish the Order for PPEL Care form. The task force shall include all of the following representatives:

(1) One representative of urban emergency medical services, appointed by the Governor.

(2) One representative of rural emergency medical services, appointed by the Governor.

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

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

(5) Two pediatric specialists from any of the following disciplines, appointed by the Governor: Oncology, cardiology, neurology, or pulmonology.
(6) One pediatric ethicist, appointed by the Governor.

(7) One nurse, appointed by the Alabama Board of Nursing.

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

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

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

(11) One pediatric certified registered nurse practitioner, appointed by the Governor.

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

(13) One representative of the Alabama Hospital Association, appointed by the association.

(14) One representative of Children's Hospital of Alabama, appointed by the hospital.

(15) One representative of Children's and Women's Hospital at the University of South Alabama, appointed by the hospital.

(16) One representative of the Alabama State Advisory Council on Palliative Care and Quality of Life, appointed by the organization.

(17) One representative of the Medical Association of the State of Alabama, appointed by the association.
(18) One representative of the Alabama Association of School Nurses, appointed by the association.

(19) Two hospital chaplains, appointed by the Governor.

(20) One pediatric palliative care physician, appointed by the Governor.

(21) One physician who practices hospital emergency medicine, appointed by the Governor.

(22) One emergency medicine physician who practices at one of the Alabama licensed pediatric specialty hospitals, appointed by the Governor.

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

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

(b) The appointing authorities shall coordinate their appointments to assure the task force membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state.

(c) The State Health Officer, or his or her designee, shall serve as chair of the task force.

(d) The first meeting of the task force shall be held not later than June 1, 2018, at which time the task force may appoint or elect a vice chair.
(e) The task force shall automatically terminate on the date the rules establishing the Order for PPEL Care form are adopted.

Section 4. Section 22-8A-17 is added to the Code of Alabama 1975, to read as follows:

§22-8A-17.

(a) An Order for Pediatric Palliative and End of Life (PPEL) Care shall only apply in the school setting if the order is included as part of a Palliative and End of Life Individual Health Plan executed pursuant to Chapter 30B of Title 16.

(b) The attending physician of a qualified minor shall have no supervisory authority over a school’s execution of a Palliative and End of Life Individual Health Plan. Any health care provider or health care facility acting within the applicable standard of care with regard to a Palliative and End of Life Individual Health Plan is not subject to criminal or civil liability and may not be found to have committed an act of unprofessional conduct. Nothing in this act or any related act involving Orders for PPEL Care shall be construed to establish a standard of care for physicians or otherwise modify, amend, or supersede any provisions of the Alabama Medical Liability Act of 1987, the Alabama Medical Liability Act of 1996, or any amendment or judicial interpretation thereof.
Section 5. Section 22-8A-17 is added to the Code of Alabama 1975, to read as follows:

§22-8A-17.

An Order for Pediatric Palliative and End of Life Care shall not apply in the school setting.

Section 6. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law, except Section 4 only becomes effective upon the passage of HB202 of the 2018 Regular Session, relating to Palliative and End of Life Individual Health Plans, and Section 5 only becomes effective if HB202 of the 2018 Regular Session is not enacted into law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in and was passed by the House 27-FEB-18, as amended.

Jeff Woodard
Clerk

21-MAR-18 22-MAR-18
Amended and Passed Concurred in Senate Amendment