

1 HB168
2 202820-2
3 By Representative Ledbetter
4 RFD: Health
5 First Read: 06-FEB-20

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8 SYNOPSIS: This bill would prohibit any health care
9 facility or health care professional from
10 instituting a do not attempt resuscitation order,
11 or similar physician's order, without the written
12 or oral consent of at least one parent or legal
13 guardian of a qualified minor patient or resident
14 unless certain conditions apply.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to end-of-life care for qualified minors;
21 to amend Section 22-8A-7, Code of Alabama 1975; to add Section
22 22-8A-18 to the Code of Alabama 1975; to prohibit any health
23 care facility or health care professional from instituting a
24 do not attempt resuscitation order, or similar physician's
25 order, without the written or oral consent of at least one
26 parent or legal guardian of a qualified minor patient or
27 resident unless certain conditions apply.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 22-8A-7, Code of Alabama 1975, is
3 amended to read as follows:

4 "§22-8A-7.

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

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

24 "(c) No physician, licensed health care
25 professional, medical care facility, other health care
26 provider, or any employee thereof who in good faith and
27 pursuant to reasonable medical standards issues or follows a

1 portable physician DNAR order entered in the medical record
2 pursuant to this chapter or causes or participates in the
3 providing, withholding, or withdrawing of life-sustaining
4 treatment or artificially provided nutrition and hydration
5 from a patient pursuant to a living will or designated proxy
6 made in accordance with this chapter or pursuant to the
7 directions of a duly designated surrogate appointed in
8 accordance with this chapter, in the absence of actual
9 knowledge of the revocation thereof, shall, as a result
10 thereof, be subject to criminal or civil liability, or be
11 found to have committed an act of unprofessional conduct.

12 "(d) Any health care provider or health care
13 facility acting within the applicable standard of care who is
14 signing, executing, ordering, or attempting to follow the
15 directives of an Order for PPEL Care, or an order issued under
16 Section 22-8A-18, either of which is in compliance with this
17 chapter shall not be subject to criminal or civil liability
18 and shall not be found to have committed an act of
19 unprofessional conduct. Nothing in this chapter shall be
20 construed to establish a standard of care for physicians or
21 otherwise modify, amend, or supersede any provision of the
22 Alabama Medical Liability Act of 1987, the Alabama Medical
23 Liability Act of 1996, or any amendment or judicial
24 interpretation thereof. A health care provider or health care
25 facility that does not know, or could not reasonably know,
26 that a physician's Order for PPEL Care or an order issued
27 under Section 22-8A-18 exists may not be civilly or criminally

1 liable for actions taken to assist a qualified minor subject
2 to a physician's Order for PPEL Care or an order issued under
3 Section 22-8A-18."

4 Section 2. Section 22-8A-18 is added to the Code of
5 Alabama 1975, to read as follows:

6 §22-8A-18

7 (a) This section shall be known and may be cited as
8 Simon's Law.

9 (b) (1) Unless an Order for Pediatric Palliative and
10 End of Life (PPEL) Care has been executed by the
11 representative of a qualified minor and entered into the
12 record by the attending physician of the qualified minor in
13 accordance with this chapter, a Do Not Attempt Resuscitation
14 (DNAR) Order, or similar physician's order, shall not be
15 instituted, either orally or in writing, for a qualified minor
16 until both of the following occur:

17 a. At least one parent or legal guardian of the
18 qualified minor is first informed of the physician's intent to
19 institute the order.

20 b. A reasonable attempt is made to inform the other
21 parent if the other parent is reasonably available and has
22 custodial or visitation rights.

23 (2) A physician, hospital, facility, or the designee
24 of any of the aforementioned shall provide information
25 regarding the intent to institute a DNAR order, or similar
26 physician's order, pursuant to this subsection both orally and
27 in writing unless, in the physician's reasonable medical

1 judgment, the urgency of the decision requires reliance on
2 only providing the information orally. The physician,
3 hospital, facility, or the designee of any of the
4 aforementioned shall contemporaneously record the provision of
5 information in the patient's medical record, and specify by
6 whom and to whom the information was given. When only one
7 parent has been informed, the physician, hospital, facility,
8 or the designee of any of the aforementioned shall
9 contemporaneously record, within the patient's medical record,
10 the attempts to inform the other parent or the reason why such
11 attempts were not made.

12 (c) Either parent of a qualified minor or the
13 qualified minor's guardian may refuse consent for a DNAR order
14 or similar physician's order for the qualified minor, either
15 in writing or orally. Any refusal of consent shall be
16 contemporaneously recorded in the patient's medical record. No
17 DNAR order, or similar physician's order, shall be instituted
18 either orally or in writing if there has been a timely refusal
19 of consent except in accordance with a court order issued
20 pursuant to subsection (d).

21 (d) If the parents or guardian of a qualified minor
22 patient are unable to agree on whether to institute or revoke
23 a DNAR order or similar physician's order, either a parent or
24 guardian may institute a proceeding under subsection (e) to
25 resolve the conflict based on a presumption in favor of the
26 provision of cardiopulmonary resuscitation. Pending the final
27 determination of the proceedings, including any appeals, a

1 DNAR order or similar physician's order shall not be
2 implemented.

3 (e) A parent, guardian, physician, hospital, or
4 other facility may petition a circuit court of the county in
5 which the patient resides, or in which the patient is
6 receiving treatment, for an order enjoining a violation or
7 threatened violation of this section or to resolve a conflict
8 or perceived conflict. Upon receiving the petition, the
9 circuit court shall issue an order fixing the date, time, and
10 place of a hearing on the petition and ordering that notice of
11 the hearing shall be provided. A preliminary hearing may be
12 held without notice if the court determines that holding that
13 hearing without notice is necessary to prevent imminent danger
14 to the life of the qualified minor. In the court's discretion,
15 a hearing may be conducted in a courtroom, a treatment
16 facility, or at some other suitable place.

17 (f) Upon the request of a patient, resident,
18 prospective patient, or prospective resident, a health care
19 facility, nursing home, or physician shall disclose in writing
20 any policies relating to a patient or resident or the services
21 a patient or resident may receive involving resuscitation or
22 life-sustaining measures, including any policies related to
23 treatments deemed non-beneficial, ineffective, futile, or
24 inappropriate, within the health care facility or nursing
25 home. Nothing in this section shall require a health care
26 facility, nursing home, or physician to have a written policy
27 relating to or involving resuscitation, life-sustaining

1 treatment, or non-beneficial treatment for qualified minor
2 patients or adult patients, residents, or wards.

3 (g) Nothing in this section shall affect the rights
4 of individuals or obligations of providers under the Federal
5 Patient Self Determination Act (42 U.S.C. §§1395cc; 1396a).

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