

[Ala. Code § 22-21-318.]

§ 22-21-318. Powers of Authority: Health Care Authorities

(a) In addition to all other powers granted elsewhere in this article, and subject to the express provisions of its certificate of incorporation, an authority shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form:

- (1) To have succession by its corporate name for the duration of time, which may be in perpetuity, specified in its certificate of incorporation or until dissolved as provided in Section 22-21-339;
- (2) To sue and be sued in its own name in civil suits and actions, and to defend suits and actions against it, including suits and actions ex delicto and ex contractu, subject, however, to the provisions of Chapter 93 of Title 11, which chapter is hereby made applicable to the authority;
- (3) To adopt and make use of a corporate seal and to alter the same at pleasure;
- (4) To adopt, alter, amend and repeal bylaws, regulations and rules, not inconsistent with the provisions of this article or its certificate of incorporation, for the regulation and conduct of its affairs and business;
- (5) To acquire, construct, reconstruct, equip, enlarge, expand, alter, repair, improve, maintain, equip, furnish and operate health care facilities at such place or places, within and without the boundaries of its authorizing subdivisions and within and without the state, as it considers necessary or advisable;
- (6) To lease or otherwise make available any health care facilities or other of its properties and assets to such persons, firms, partnerships, associations or corporations and on such terms as the board deems to be appropriate, to charge and collect rent or other fees or charges therefor and to terminate any such lease or other agreement upon the failure of the lessee or other party thereto to comply with any of its obligations thereunder;
- (7) To receive, acquire, take and hold (whether by purchase, gift, transfer, foreclosure, lease, devise, option or otherwise) real and personal property of every description, or any interest therein, and to manage, improve and dispose of the same by any form of legal conveyance or transfer; provided however, that the authority shall not, without the prior approval of the governing body of each authorizing subdivision, have the power to dispose of (i) substantially all its assets, or (ii) any health care facilities the disposition of which would materially and significantly reduce or impair the level of hospital or health care services rendered by the authority; and provided further, that the foregoing proviso shall not be construed to require the prior approval of any such governing body for the mortgage or pledge of all or substantially all its assets or of any of its health care facilities, for the foreclosure of any such mortgage or pledge or for any sale or other disposition thereunder;
- (8) To mortgage, pledge or otherwise convey its property and its revenues from any source;

- (9) To borrow money in order to provide funds for any lawful corporate function, use or purpose and, in evidence of such borrowing, to sell and issue interest-bearing securities in the manner provided and subject to the limitations set forth hereinafter;
- (10) To pledge for payment of any of its securities any revenues (including proceeds from any hospital tax to which it may be entitled) and to mortgage or pledge any or all of its health care facilities or other assets or properties or any part or parts thereof, whether then owned or thereafter acquired, as security for the payment of the principal of and the interest and premium, if any, on any securities so issued and any agreements made in connection therewith;
- (11) To provide instruction and training for, and to contract for the instruction and training of, nurses, technicians and other technical, professional and paramedical personnel;
- (12) To select and appoint medical and dental staff members and others licensed to practice the healing arts and to delineate and define the privileges granted each such individual;
- (13) To affiliate with, and to contract to provide training and clinical experience for students of, other institutions;
- (14) To contract for the operation of any department, section, equipment or holdings of the authority, and to enter into agreements with any person, firm or corporation for the management by said person, firm or corporation on behalf of the authority of any of its properties or for the more efficient or economical performance of clerical, accounting, administrative and other functions relating to its health care facilities;
- (15) To establish, collect and alter charges for services rendered and supplies furnished by it;
- (16) To make all needful or appropriate rules and regulations for the conduct of any health care facilities and other properties owned or operated by it and to alter such rules and regulations;
- (17) To provide for such insurance as the business of the authority may require;
- (18) To receive and accept from any source aid or contributions in the form of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this article, subject to any lawful condition upon which any such aid or contributions may be given or made;
- (19) To cooperate with the State Board of Health and the State Department of Mental Health and to make contracts with either of said agencies respecting the operation of any health care facilities or other properties owned or operated by it, whether as an agent for either or both of said agencies or otherwise;
- (20) To enter into contracts with, to accept aid, loans and grants from, to cooperate with and to do any and all things not specifically prohibited by this article or the constitution of the state that may be necessary in order to avail itself of the aid and cooperation of the United States of America, the state, any county or municipality, or any agency, instrumentality or political subdivision of any of the foregoing in furtherance of the purposes of

this article; to give such assurances, contractual or otherwise, to or for the benefit of any of the foregoing as may be required in connection with, or as conditions precedent to the receipt of, any such aid, loan or grant; and to take such action not in violation of law as may be necessary in order to qualify the authority to receive funds appropriated by any of the foregoing;

(21) To give such assurances, contractual or otherwise, and to make such commitments and agreements as may be necessary or desirable to preclude the exercise of any rights of recovery with respect to, or the forfeiture of title to, any of its health care facilities or other property or any health care facilities or other property proposed to be acquired by it;

(22) To make and alter rules and regulations for the treatment of indigent patients;

(23) To assume any obligations of any entity that conveys and transfers to the authority any health care facilities or other property, or interest therein, provided that such obligations appertain to the health care facilities, property or interest so conveyed and transferred to the authority;

(24) To assume, establish, fund and maintain retirement, pension or other employee benefit plans for its employees;

(25) To appoint, employ, contract with, and provide for the compensation of, such employees and agents, including but not limited to, architects, attorneys, consultants, engineers, accountants, financial experts, fiscal agents and such other advisers, consultants and agents as the business of the authority may require;

(26) To invest, in any trust fund established under and subject to the general laws of the state for investment or self-insurance purposes with investment authority as may be authorized by law for such trusts, any funds of the authority available therefor;

(27) To the extent permitted by its contracts with the holders of its securities, to purchase securities out of any of its funds or moneys available therefor and to hold, cancel or resell such securities;

(28) To make any expenditure of any moneys under its control that would, if the authority were generally subject to state corporate income taxation, be considered an ordinary and necessary expense of the authority within the meaning of Section 40-18-35 and applicable regulations thereunder, and without limiting the generality of the foregoing, to expend its moneys for the recruitment of employees and physicians, dentists and other health care professionals and for the promotion of employee morale and well-being; provided however, that nothing herein contained shall be construed to permit the authority (i) to increase the compensation of any of its officers or employees on a retroactive basis, (ii) to pay any extra compensation to any of its officers or employees for services theretofore rendered, (iii) to furnish free or below-cost office space to any nonhospital-based physician, dentist or other health care professional for use in his private practice, or (iv) to guarantee the income of any nonhospital-based physician, dentist or other health care professional in his private practice;

(29) To provide scholarships for students in training for work in the duties peculiar to health care;

(30) To enter into affiliation, cooperation, territorial, management or other similar agreements with other institutions (public or private) for the sharing, division, allocation or exclusive furnishing of services, referral of patients, management of facilities and other similar activities;

(31) To exercise all powers granted hereunder in such manner as it may determine to be consistent with the purposes of this article, notwithstanding that as a consequence of such exercise of such powers it engages in activities that may be deemed "anticompetitive" within the contemplation of the antitrust laws of the state or of the United States; and

(32) To enter into such contracts, agreements, leases and other instruments, and to take such other actions, as may be necessary or convenient to accomplish any purpose for which the authority was organized or to exercise any power expressly granted hereunder.

(b) The Legislature hereby declares:

(1) That any expenditure permitted by the provisions of subdivision (28) of the preceding subsection (a) of this section to be made by or on behalf of an authority shall be deemed an expenditure of operating and maintaining public hospitals and public health facilities for a public purpose; and

(2) That no expenditure permitted by the provisions of said subdivision (28) to be made by or on behalf of an authority shall be considered to be a lending of credit or a granting of public money or thing of value to or in aid of any individual, association or corporation within the meaning of any constitutional or statutory provision.

Nothing herein contained shall be construed as prohibiting or rendering unlawful any otherwise lawful expenditure made by or on behalf of an authority, solely because such expenditure is not expressly permitted by the terms of said subdivision (28).

(c) As a basis for the power granted in subdivision (31) of the preceding subsection (a), the Legislature hereby:

(1) Recognizes and contemplates that the nature and scope of the powers conferred on authorities hereunder are such as may compel each authority, in the course of exercising its other powers or by virtue of such exercise of such powers, to engage in activities that may be characterized as "anticompetitive" within the contemplation of the antitrust laws of the state or of the United States; and

(2) Determines, as an expression of the public policy of the state with respect to the displacement of competition in the field of health care, that each authority, when exercising its powers hereunder with respect to the operation and management of health care facilities, acts as an agency or instrumentality of its authorizing subdivisions and as a political subdivision of the state.

(d) Nothing herein contained shall be construed as granting to an authority the power to levy any taxes.