

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/19/03 S4/7/03

A Bill

Act 1322 of 2003
HOUSE BILL 1834

5 By: Representatives Penix, Anderson, Bledsoe, Bond, Borhauer, Dobbins, Green, Hardwick, Harris,
6 Hutchinson, Key, Lamoureux, Matayo, Medley, Pace, Rosenbaum, Schulte, Stovall, Sullivan, C. Taylor,
7 *Bright*

For An Act To Be Entitled

11 AN ACT TO ENSURE THAT NUTRITION AND HYDRATION ARE
12 *PROVIDED AS REQUESTED* TO ALL ARKANSANS AT THE END
13 OF LIFE; AND FOR OTHER PURPOSES.

Subtitle

16 AN ACT TO ENSURE THAT NUTRITION AND
17 HYDRATION ARE *PROVIDED AS REQUESTED* TO
18 ALL ARKANSANS AT THE END OF LIFE.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23 *SECTION 1.* Arkansas Code § 20-10-1003(b), concerning residents'
24 rights, is amended to read as follows:

25 (b) The Office of Long-Term Care shall promulgate through rules and
26 regulations a residents' bill of rights which must include provisions
27 addressing each of the following as a minimum statement of residents' rights.
28 The office may place restrictions or limitations on any right listed below
29 when such is necessary to protect the health, welfare, or safety of the
30 resident or other residents:

- 31 (1) The right to exercise all constitutional and legal rights;
- 32 (2) The right to a safe and clean environment;
- 33 (3) The right to dignity and respect;
- 34 (4) The right to nursing and medical care;
- 35 (5) The right to personal cleanliness;
- 36 (6) The right to choose at their own expense a personal



1 physician and pharmacist;

2 (7) The right to have knowledge and input into medical
3 treatment, records, and plan of care;

4 (8) The right to refuse experimental treatment;

5 (9) The right to confidentiality of medical records;

6 (10)(A) The right to be free from physical or mental abuse,
7 corporal punishment, involuntary seclusion, and any physical or chemical
8 restraints imposed for purposes of discipline or convenience and not required
9 to treat the resident's medical symptoms.

10 (B) Restraints may be imposed only to ensure the physical
11 safety of the resident or of other residents and only upon the written order
12 of a physician that specifies the duration and circumstances under which the
13 restraints are to be used, except for emergency conditions until such an
14 order could reasonably be obtained;

15 (11) The right to exercise civil liberties, including the right
16 to vote;

17 (12) The right to the free exercise of religion, including the
18 right to rely on spiritual means for treatment;

19 (13) The right to privacy, including the right to refuse being
20 photographed by persons other than those licensed under the Arkansas Medical
21 Practices Act, §§ 17-95-201 to 17-95-411;

22 (14) The right to personal clothing and belongings; ~~and~~

23 (15) The right to personal financial information; ~~and~~

24 (16) The right to direct whether to receive nutrition or
25 hydration.

26
27 SECTION 2. Arkansas Code § 20-13-901 is amended to read as follows:
28 20-13-901. Definitions.

29 As used in this subchapter, unless the context clearly requires
30 otherwise, the following definitions apply:

31 (1) "Attending physician" has the meaning provided in § 20-17-201(1);

32 (2) "Board" means the State Board of Health;

33 (3) "Department" means the Department of Health;

34 (4) "Do Not Resuscitate Identification" means a standardized
35 identification card, form, necklace, or bracelet of uniform size and design,
36 approved by the department, that signifies:

1 (A) That the possessor has executed an advance directive as
2 provided in § 20-17-202 which specifically addresses the cardiopulmonary
3 resuscitation option of health care and which has not been revoked; or

4 (B) That the possessor's attending physician has issued an
5 Emergency Medical Services Do Not Resuscitate Order for the possessor and has
6 documented the grounds for the order in the possessor's medical file;

7 (5)(A) "Emergency Medical Services Do Not Resuscitate Order" means a
8 written physician's order in a form approved by the department which
9 authorizes qualified emergency medical services personnel to withhold
10 cardiopulmonary resuscitation from a particular patient in the event of
11 cardiac or respiratory arrest.

12 (B) For the purposes of this subchapter, "cardiopulmonary
13 resuscitation" or "CPR" shall include cardiac compression, endotracheal
14 intubation and other advanced airway management, artificial ventilation,
15 defibrillation, administration of cardiac resuscitation medications, and
16 related procedures.

17 (C)(i) Emergency Medical Services Do Not Resuscitate Orders
18 shall not authorize the withholding of other medical interventions, such as
19 intravenous fluids, oxygen, nutrition, hydration, or both, or other indicated
20 therapies short of cardiopulmonary resuscitation unless such therapies are
21 also specified by advance directive or durable power of attorney for health
22 care to be withheld.

23 (ii) The Emergency Medical Services Do Not Resuscitate
24 Orders shall not authorize the withholding of therapies deemed necessary to
25 provide comfort care or alleviate pain;

26 (6) "Emergency Medical Services Do Not Resuscitate Protocol" means a
27 standardized method of procedure, approved by the board and adopted in the
28 rules of the department, for the withholding of emergency life-sustaining
29 procedures by emergency medical services personnel;

30 (7) "Emergency medical services personnel" means paid or volunteer
31 fire fighters, law enforcement officers, first responders, emergency medical
32 technicians, or other emergency service personnel acting within the ordinary
33 course of their professions;

34 (8)(A) "Health care facility" means any institution, building, or
35 agency or portion thereof, private or public, excluding federal facilities,
36 whether organized for profit or not, used, operated, or designed to provide

1 health services, medical treatment, or nursing, rehabilitative, or preventive
2 care to any person or persons.

3 (B) ~~The term~~ "Health care facility" includes, but is not limited
4 to, ambulatory surgical facilities, health maintenance organizations, home
5 health agencies, hospices, hospitals, infirmaries, kidney treatment centers,
6 long-term care facilities, medical assistance facilities, mental health
7 centers, outpatient facilities, public health centers, rehabilitation
8 facilities, residential treatment facilities, and adult day-care centers;

9 (9) "Life-sustaining procedure" means cardiopulmonary resuscitation or
10 a component of cardiopulmonary resuscitation; and

11 (10) "Physician" means a person licensed to practice medicine in this
12 state pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq.

13
14 SECTION 3. Arkansas Code § 20-17-202(b) and (c), declarations relating
15 to the use of life-sustaining treatment, is amended to read as follows:

16 (b) A declaration may, but need not, be in the following form in the
17 case where the patient has a terminal condition.

18
19 DECLARATION

20
21 If I should have an incurable or irreversible condition that will
22 cause my death within a relatively short time, and I am no longer able to
23 make decisions regarding my medical treatment, I direct my attending
24 physician, pursuant to the Arkansas Rights of the Terminally Ill or
25 Permanently Unconscious Act, to [withhold or withdraw treatment that only
26 prolongs the process of dying and is not necessary to my comfort or to
27 alleviate pain] [follow the instructions of whom I
28 appoint as my Health Care Proxy to decide whether life-sustaining treatment
29 should be withheld or withdrawn].

30
31 It is my specific directive that nutrition may be withheld after
32 consultation with my attending physician.

33 It is my specific directive that hydration may be withheld after
34 consultation with my attending physician.

35 It is my specific directive that nutrition may not be withheld.

36 It is my specific directive that hydration may not be withheld.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Signed this day of ,
.

Signature

.....

Address

.....

The declarant voluntarily signed this writing in my presence.

Witness

.....

Address

.....

Witness

.....

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

Address

.....

(c) A declaration may, but need not, be in the following form in the case where the patient is permanently unconscious.

DECLARATION

If I should become permanently unconscious I direct my attending physician, pursuant to the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, to [withhold or withdraw life-sustaining treatments that are no longer necessary to my comfort or to alleviate pain] [follow the instructions of whom I appoint as my health care proxy to decide whether life-sustaining treatment should be withheld or withdrawn].

It is my specific directive that nutrition may be withheld after consultation with my attending physician.

It is my specific directive that hydration may be withheld after consultation with my attending physician.

It is my specific directive that nutrition may not be withheld.

It is my specific directive that hydration may not be withheld..

Signed this day of , 19 20
.

Signature

.....

Address

.....

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

The declarant voluntarily signed this writing in my presence.

Witness

.....

Address

.....

Witness

.....

Address

.....

SECTION 4. Arkansas Code § 20-17-202, concerning declarations relating to use of life-sustaining treatment, is amended to add additional sections to read as follows:

(f) A declaration executed by a qualified individual shall be clear and convincing evidence of his or her wishes, but clear and convincing evidence of an individual's wishes is not limited to the declarations under this section.

(g)(1) The directives concerning nutrition and hydration contained in subsections (b) and (c) of this section shall apply only to declarations executed on and after the effective date of this subsection.

(2) All declarations executed before that date shall remain in

1 full force and effect, and the provisions of subsections (b) and (c)
 2 pertaining to hydration and nutrition shall not be applied in the
 3 interpretation or construction of any such declaration, nor shall they be
 4 applied to in any way invalidate any such declaration or to otherwise limit
 5 the directives, powers, and authority granted under any such declaration.

6
 7 SECTION 5. Arkansas Code § 20-17-204(a), concerning revocation of
 8 declaration relating to use of life-sustaining treatment, is amended to read
 9 as follows:

10 (a)(1) A declaration may be revoked at any time and in any manner by
 11 the declarant, without regard to the declarant's mental or physical
 12 condition. A revocation is effective upon communication to the attending
 13 physician or other health care provider by the declarant or a witness to the
 14 revocation.

15 (2)(A) The wishes of a patient who requests nutrition,
 16 hydration, or both shall be honored.

17 (B) Unless the use of artificial means is specifically
 18 requested, a patient's request for nutrition, hydration, or both, shall not
 19 be honored by use of artificial means if doing so would require the insertion
 20 of any apparatus into the patient's body.

21
 22
 23 SECTION 8. Arkansas Code § 20-17-206(b), concerning treatment of
 24 qualified patients relating to the use of life-sustaining treatment, is
 25 amended to read as follows:

26 (b) This subchapter does not affect the responsibility of the
 27 attending physician or other health care provider to provide treatment,
 28 including nutrition, ~~and~~ hydration or both, for a patient's ~~comfort, care,~~ or
 29 alleviation of pain.

30
 31 SECTION 9. Arkansas Code § 20-17-214 is amended to read as follows:
 32 20-17-214. Who may execute written request for another.

33 (a) If any person is a minor, or an adult where a valid declaration
 34 does not exist and a health care proxy has not been designated and who, in
 35 the opinion of the attending physician, is no longer able to make health care
 36 decisions, then such declaration may be executed in the same form on his or

1 her behalf by the first of the following individuals or category of
2 individuals who exist and are reasonably available for consultation:

- 3 (1) A legal guardian of the patient, if one has been appointed;
4 (2) In the case of an unmarried patient under the age of
5 eighteen (18), the parents of the patient;
6 (3) The patient's spouse;
7 (4) The patient's adult child, or, if there is more than one
8 (1), then a majority of the patient's adult children participating in the
9 decision;
10 (5) The parents of a patient over the age of eighteen (18);
11 (6) The patient's adult sibling, or, if there is more than one
12 (1), then a majority of the patient's adult siblings participating in the
13 decision;
14 (7) Persons standing in loco parentis to the patient;
15 (8) A majority of the patient's adult heirs at law who
16 participate in the decision.

17 (b)(1) Even if an advance directive that includes a directive to
18 withhold nutrition, hydration, or both is signed by a person under § 20-17-
19 214,
20 if the terminally ill patient requests nutrition or hydration, his or her
21 wishes shall be honored.

22 (2) Unless the use of artificial means is specifically
23 requested, a patient's request for nutrition, hydration, or both, shall not
24 be honored by use of artificial means if doing so would require the insertion
25 of any apparatus into the patient's body.

26
27 **SECTION 6. Legislative purpose.**

28 (a)(1) The General Assembly recognizes that residents of long-term
29 care facilities are among the most vulnerable of the state's citizens.

30 (2) Further, the disproportionate number of these residents who
31 are Medicaid eligible, and who have little or no close family involvement in
32 their lives, heightens their vulnerability.

33 (b) It is the intent of the General Assembly that, to ensure proper
34 care and treatment of these individuals, particularly at end-of-life, the
35 circumstances and conditions under which the withholding of nutrition,
36 hydration, or both, may occur, be clarified.

1
2 SECTION 7. Title 20, Subtitle 2, Chapter 10, Subchapter 10 is amended
3 to add an additional section to read as follows:

4 20-10-1010. End-of-life treatment of long-term care residents.

5 (a) For residents suffering from a terminal condition, as defined in §
6 20-17-201, facilities may withhold nutrition, hydration, or both only
7 pursuant to:

8 (1) The directive, or with the consent, of the resident;

9 (2) A validly executed declaration, as defined in Section 20-17-
10 201; or

11 (3) The instructions of a person authorized to execute a written
12 request for another under § 20-17-214 if:

13 (A) The resident did not execute a declaration; and

14 (B) In the opinion of the attending physician, the
15 resident is no longer able to make health care decisions for himself or
16 herself; or

17 (4) The directions of an attorney-in-fact appointed under a
18 validly executed durable power of attorney for health care, as defined in §
19 20-13-104.

20 (b) For residents who are permanently unconscious, as defined in § 20-
21 17-201, facilities may withhold nutrition, hydration, or both only pursuant
22 to:

23 (1) A validly executed declaration, as defined in Section 20-17-
24 201; or

25 (2) The instructions of a person authorized to execute a written
26 request for another pursuant to § 20-17-214 if:

27 (A) The resident did not execute a declaration; and

28 (B) In the opinion of the attending physician, the
29 resident is no longer able to make health care decisions for himself or
30 herself; or

31 (3) The directions of an attorney-in-fact appointed under a
32 validly executed durable power of attorney for health care, as defined in §
33 20-13-104.

34 (c)(1) Notwithstanding subsections (a) and (b) of this section, the
35 wishes of a resident who requests nutrition, hydration, or both, shall be
36 honored.

