

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

A Bill

HOUSE BILL 1834

4
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

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For An Act To Be Entitled

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

13
14

Subtitle

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

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

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22 SECTION 1. Arkansas Code § 20-9-602 is amended to read as follows:
23 20-9-602. Consent generally.

24 (a) It is recognized and established that, in addition to such other
25 persons as may be so authorized and empowered, any one (1) of the following
26 persons is authorized and empowered to consent, either orally or otherwise,
27 to any surgical or medical treatment or procedure not prohibited by law which
28 may be suggested, recommended, prescribed, or directed by a licensed
29 physician:

30 (1) Any adult, for himself or herself;

31 (2) Any parent, whether an adult or a minor, for his or her
32 minor child or for his or her adult child of unsound mind whether the child
33 is of the parent's blood, is an adopted child, is a stepchild, or is a foster
34 child; provided, however, the father of an illegitimate child cannot consent
35 for the child solely on the basis of parenthood;

36 (3) Any married person, whether an adult or a minor, for himself



1 or herself;

2 (4) Any female, regardless of age or marital status, for herself
3 when given in connection with pregnancy or childbirth, except the unnatural
4 interruption of a pregnancy;

5 (5) Any person standing in loco parentis, whether formally
6 serving or not, and any guardian, conservator, or custodian, for his or her
7 ward or other charge under disability;

8 (6) Any emancipated minor, for himself or herself;

9 (7) Any unemancipated minor of sufficient intelligence to
10 understand and appreciate the consequences of the proposed surgical or
11 medical treatment or procedures, for himself or herself;

12 (8) Any adult, for his or her minor sibling or his or her adult
13 sibling of unsound mind;

14 (9) During the absence of a parent so authorized and empowered,
15 any maternal grandparent and, if the father is so authorized and empowered,
16 any paternal grandparent, for his or her minor grandchild or for his or her
17 adult grandchild of unsound mind;

18 (10) Any married person, for a spouse of unsound mind;

19 (11) Any adult child, for his or her mother or father of unsound
20 mind; and

21 (12) Any minor incarcerated in the Department of Correction or
22 the Department of Community Punishment, for himself or herself.

23 (b) However, for purposes of this section, "consent" does not include
24 withholding medical treatment except by:

25 (1) An adult for himself or herself;

26 (2) A legally appointed guardian for the ward; or

27 (3) An healthcare proxy for the declarant.

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30 SECTION 2. Arkansas Code § 20-10-1003(b), concerning residents'
31 rights, is amended to read as follows:

32 (b) The Office of Long-Term Care shall promulgate through rules and
33 regulations a residents' bill of rights which must include provisions
34 addressing each of the following as a minimum statement of residents' rights.
35 The office may place restrictions or limitations on any right listed below
36 when such is necessary to protect the health, welfare, or safety of the

1 resident or other residents:

2 (1) The right to exercise all constitutional and legal rights;

3 (2) The right to a safe and clean environment;

4 (3) The right to dignity and respect;

5 (4) The right to nursing and medical care;

6 (5) The right to personal cleanliness;

7 (6) The right to choose at their own expense a personal
8 physician and pharmacist;

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

11 (8) The right to refuse experimental treatment;

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

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

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

22 (11) The right to exercise civil liberties, including the right
23 to vote;

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

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

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

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

31 (16) The right to nutrition and hydration.

32
33 SECTION 3. Arkansas Code § 20-13-104(c)(2), concerning durable powers
34 of attorney for health care, is amended to read as follows:

35 (2)(A) The term "health care" shall not include decisions
36 concerning life-sustaining treatment set forth in § 20-17-201 et seq., or the

1 decision to withhold nutrition, hydration, or both.

2 (B) However, a power of attorney for health care may
3 contain the declaration set forth in § 20-17-202 relating to such life-
4 sustaining treatments.

5 (C) The healthcare proxy, as defined in § 20-17-201, or an
6 attorney under a durable power of attorney for health care may not direct the
7 withholding of nutrition, hydration, or both, unless the advance directive or
8 durable power of attorney for health care expressly and specifically confers
9 that authority on the healthcare proxy or attorney-in-fact.

10

11 SECTION 4. Arkansas Code § 20-13-901 is amended to read as follows:
12 20-13-901. Definitions.

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

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

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

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

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

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

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

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

32 (B) For the purposes of this subchapter, "cardiopulmonary
33 resuscitation" or "CPR" shall include cardiac compression, endotracheal
34 intubation and other advanced airway management, artificial ventilation,
35 defibrillation, administration of cardiac resuscitation medications, and
36 related procedures.

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

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

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

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

18 (8)(A) "Health care facility" means any institution, building, or
 19 agency or portion thereof, private or public, excluding federal facilities,
 20 whether organized for profit or not, used, operated, or designed to provide
 21 health services, medical treatment, or nursing, rehabilitative, or preventive
 22 care to any person or persons.

23 ~~(B) The term~~ "Health care facility" includes, but is not limited
 24 to, ambulatory surgical facilities, health maintenance organizations, home
 25 health agencies, hospices, hospitals, infirmaries, kidney treatment centers,
 26 long-term care facilities, medical assistance facilities, mental health
 27 centers, outpatient facilities, public health centers, rehabilitation
 28 facilities, residential treatment facilities, and adult day-care centers;

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

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

33
 34 SECTION 5. Arkansas Code § 20-17-201, is amended to read as follows:
 35 20-17-201. Definitions.

36 As used in this subchapter, unless the context otherwise requires:

1 (1) "Attending physician" means the physician who has primary
 2 responsibility for the treatment and care of the patient;

3 (2) "Declaration" means a writing executed in accordance with the
 4 requirements of § 20-17-202(a);

5 (3) "Health care proxy" is a person eighteen (18) years old or older
 6 appointed by the patient as attorney-in-fact to make health care decisions
 7 including the withholding or withdrawal of life-sustaining treatment if a
 8 qualified patient, in the opinion of the attending physician, is permanently
 9 unconscious, incompetent, or otherwise mentally or physically incapable of
 10 communication;

11 (4) "Health care provider" means a person who is licensed, certified,
 12 or otherwise authorized by the law of this state to administer health care in
 13 the ordinary course of business or practice of a profession;

14 (5)(A) "Life-sustaining treatment" means any medical procedure or
 15 intervention that, when administered to a qualified patient, will serve only
 16 to prolong the process of dying or to maintain the patient in a condition of
 17 permanent unconsciousness+.

18 (B) Unless specifically included on an advance directive, "
 19 life-sustaining treatment" shall not include the administration of nutrition,
 20 hydration, or both;

21 (6) "Permanently unconscious" means a lasting condition, indefinitely
 22 without change in which thought, feeling, sensations, and awareness of self
 23 and environment are absent;

24 (7) "Person" means an individual, corporation, business trust, estate,
 25 trust, partnership, association, joint venture, government, governmental
 26 subdivision or agency, or any other legal or commercial entity;

27 (8) "Physician" means an individual licensed to practice medicine in
 28 this state;

29 (9) "Qualified patient" means a patient eighteen (18) or more years of
 30 age who has executed a declaration or appointed a health care proxy and who
 31 has been determined to be in a terminal condition or in a permanently
 32 unconscious state by the attending physician and another qualified physician
 33 who has examined the patient;

34 (10) "State" means a state, territory, or possession of the United
 35 States, the District of Columbia, or the Commonwealth of Puerto Rico; and

36 (11) "Terminal condition" means an incurable and irreversible

1 condition that, without the administration of life-sustaining treatment,
2 will, in the opinion of the attending physician, result in death within a
3 relatively short time.

4
5 SECTION 6. Arkansas Code § 20-17-202(b) and (c), declarations relating
6 to the use of life-sustaining treatment, is amended to read as follows:

7 (b)(1) A declaration may, but need not, be in the following form in
8 the case where the patient has a terminal condition.

9 (2) If the declarant desires that nutrition, hydration, or both
10 be considered as life-sustaining treatment, the declaration shall
11 specifically authorize the health care proxy to withhold nutrition,
12 hydration, or both either by initialing the appropriate line or by signing a
13 specific statement that nutrition, hydration, or both be considered as life-
14 sustaining treatment.

15
16 DECLARATION

17
18 If I should have an incurable or irreversible condition that will
19 cause my death within a relatively short time, and I am no longer able to
20 make decisions regarding my medical treatment, I direct my attending
21 physician, pursuant to the Arkansas Rights of the Terminally Ill or
22 Permanently Unconscious Act, to [withhold or withdraw treatment that only
23 prolongs the process of dying and is not necessary to my comfort or to
24 alleviate pain] [follow the instructions of whom I
25 appoint as my Health Care Proxy to decide whether life-sustaining treatment
26 should be withheld or withdrawn].

27
28 _____ My health care proxy may withhold nutrition.

29 _____ My health care proxy may withhold hydration.

30
31 _____ My health care proxy may NOT withhold nutrition.

32 _____ My health care proxy may NOT withhold hydration.

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36 Signed this day of ,

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5 Signature

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10 Address

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14 The declarant voluntarily signed this writing in my presence.

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18 Witness

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23 Address

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28 Witness

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33 Address

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35 (c)(1) A declaration may, but need not, be in the following form in the
36 case where the patient is permanently unconscious.

(2) However, if the patient desires that nutrition, hydration, or both be considered as life-sustaining treatment, the declaration must specifically authorize the health care proxy to withhold nutrition, hydration, or both either by initialing the appropriate line or by signing a specific statement that nutrition, hydration, or both be considered as life-sustaining treatment:

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].

_____ My health care proxy may withhold nutrition.

_____ My health care proxy may withhold hydration.

_____ My health care proxy may NOT withhold nutrition.

_____ My health care proxy may NOT withhold hydration.

Signed this day of , 19 20

Signature

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Address

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4 The declarant voluntarily signed this writing in my presence.

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8 Witness

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18 Witness

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23 Address

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

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

34 (2) If nutrition, hydration, or both are withheld, a request for
35 nutrition, hydration, or both shall constitute a revocation.

36

1
 2 SECTION 8. Arkansas Code § 20-17-206(b), concerning treatment of
 3 qualified patients relating to the use of life-sustaining treatment, is
 4 amended to read as follows:

5 (b)(1) This subchapter does not affect the responsibility of the
 6 attending physician or other health care provider to provide treatment,
 7 including nutrition, ~~and~~ hydration or both, for a patient’s comfort, care, or
 8 alleviation of pain.

9 (2) The attending physician or other health care provider may
 10 not withhold nutrition and hydration without an appropriately signed advance
 11 directive.

12
 13 SECTION 9. Arkansas Code § 20-17-214 is amended to read as follows:
 14 20-17-214. Who may execute written request for another.

15 (a) If any person is a minor, or an adult where a valid declaration
 16 does not exist and a health care proxy has not been designated and who, in
 17 the opinion of the attending physician, is no longer able to make health care
 18 decisions, then such declaration may be executed in the same form on his or
 19 her behalf by the first of the following individuals or category of
 20 individuals who exist and are reasonably available for consultation:

- 21 (1) A legal guardian of the patient, if one has been appointed;
- 22 (2) In the case of an unmarried patient under the age of
 23 eighteen (18), the parents of the patient;
- 24 (3) The patient’s spouse;
- 25 (4) The patient’s adult child, or, if there is more than one
 26 (1), then a majority of the patient’s adult children participating in the
 27 decision;
- 28 (5) The parents of a patient over the age of eighteen (18);
- 29 (6) The patient’s adult sibling, or, if there is more than one
 30 (1), then a majority of the patient’s adult siblings participating in the
 31 decision;
- 32 (7) Persons standing in loco parentis to the patient;
- 33 (8) A majority of the patient’s adult heirs at law who
 34 participate in the decision.

35 (b) The attending physician or other health care provider may not
 36 substitute his or her judgment and make a decision that is contrary to the

1 decision of the person consulted under subsection (a) of this section.

2 (c) If an advance directive that includes a directive to withhold
3 nutrition, hydration, or both is signed by a person under § 20-17-214, a
4 request by the person for nutrition, hydration, or both shall constitute a
5 revocation and the person's wishes shall be followed.

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