



# Arkansas Department of Health

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4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000  
Governor Asa Hutchinson  
José R. Romero, MD, Secretary of Health

## Act 311 of 2021

### Minimum Visitation Requirements

Act 311 of 2021 was signed into law on March 10, 2021, and was immediately effective. This law sets minimum visitation requirements for certain health care providers to include those hospitals and hospice agencies licensed by the Arkansas Department of Health. The law also includes health care professionals whose Licensing Boards may fall under the Arkansas Department of Health:

Providers are guided to develop visitation policies and procedures which follow the minimum requirements set forth under Act 311 of 2021.

#### **Definitions**

The law includes these definitions codified at Ark. Code Ann. § 20-6-403.

Compassionate care visitation means a visit with a friend or family member that is necessary to meet the physical or mental needs of a resident when a resident is exhibiting signs of physical or mental distress, including without limitation:

- End-of-life situations;
- Adjustment support after moving to a new facility or environment;
- Emotional support after the loss of a friend or family member;
- Physical support after eating or drinking issues, including weight loss or dehydration; or
- Social support after frequent crying, distress, or depression.

Compassionate care visitation includes without limitation:

- Clergy members;
- Lay persons offering religious or spiritual support;
- Other persons requested by the resident for the purpose of a compassionate care visit; and
- a person providing a service requested by the resident such as a hair dresser or barber.

Healthcare facility means a hospital, an office of a healthcare professional, a long-term care facility, or a hospice facility.

Healthcare professional means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of the practice of his or her profession.

Long-term care facility means:

- A nursing home;
- A residential care facility;

A post-acute head injury retraining and residential facility;  
An intermediate care facility for individuals with developmental disabilities;  
An assisted living facility; or  
A facility that provides long-term medical or personal care

Other individuals given access means persons other than patients and residents of a healthcare facility.

Patient with a disability means a patient who needs assistance to effectively communicate with hospital staff, make healthcare decisions, or engage in activities of daily living due to a disability such as:

A physical, intellectual, behavioral, or cognitive disability;  
Deafness, being hard of hearing, or other communication barriers;  
Blindness;  
Autism spectrum disorder; or  
Dementia

Support person means an individual other than a spouse or legal guardian who is designated by the patient to advocate or provide support for the patient.

### **Patients with Disabilities**

The law includes mandates outlined below specific to visitation for patients with disabilities. This content is codified at § 20-6-404.

Upon the request of a patient with a disability, a hospital, office of a healthcare professional, or hospice facility licensed in this state shall allow a patient with a disability to designate at least three (3) support persons and shall allow at least one (1) support person to be present with the patient with a disability at all times in the emergency department and during the stay of a patient with a disability in the hospital, office of a healthcare professional, or hospice facility if necessary to facilitate the care of the patient with a disability, including without limitation when the patient with a disability:

Has a cognitive or mental health disability that affects the ability of a patient with a disability to make medical decisions or understand medical advice;

Needs assistance with activities of daily living and the staff are unable to provide or are less effective at providing the assistance;

Is deaf, hard of hearing, or has other communication barriers and requires the assistance of a support person to ensure effective communication with staff;

Has behavioral health needs that the support person can address more effectively than the staff; or is making a decision to consent to treatment or refuse treatment.

A healthcare professional or healthcare facility shall not discriminate against a patient with a disability by requiring the patient with a disability to:

Execute an advance directive or a physician order for life-sustaining treatment as a condition of receiving treatment or visitation; or agree to a do-not-resuscitate or similar order as a condition of receiving treatment or visitation.

Does not affect any obligation of a healthcare professional or healthcare facility to:

Provide patients with effective communication supports or other reasonable accommodations in accordance with federal and state laws; or make exceptions to the visitor policy of a healthcare facility as a reasonable accommodation under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as existing on January 1, 2021.

### **Children in hospitals or offices of health care professionals**

The law includes these mandates specific to visitation for minor patients. This section of Act 311 is codified at § 20-6-405.

A child has the right to have a parent, legal guardian, or person standing in loco parentis physically present with the child while the child receives care in a hospital or an office of a healthcare professional.

An adult patient has the right to have a spouse, support person, or legal guardian physically present with the adult patient while the adult receives care in a hospital or an office of a healthcare professional.

A person with a right to be physically present may leave and return to the hospital or office of a healthcare professional that is caring for the patient.

A hospital or an office of a healthcare professional shall not:

- Require a patient to waive the rights specified in Act 311 of 2021.

- Prevent a parent, legal guardian, or person standing in loco parentis of a child receiving care in a hospital or an office of a healthcare professional from having daily physical access to the child at reasonable times; or separate the parent, legal guardian, or person standing in loco parentis of a child receiving care in a hospital or an office of a healthcare professional from the child except in cases of suspected abuse or threats of violence or to prevent disruption to the care of the child.

### **Restrict access of visitors by hospital or healthcare professional & use of telecommunications**

The law does allow for in person visitor restriction but only in specific circumstances. This information is codified at § 20-6-405.

A hospital or an office of a healthcare professional may restrict access of any person to a patient:

- At the request of the patient or a law enforcement agency.

- Due to a court order.

- To prevent disruption to the care of the patient.

- If the person has signs and symptoms of a transmissible infection. However, the hospital or office of a healthcare professional shall allow access through telephone, telecommunication means, or other means that ensure the protection of the patient. The person shall follow respiratory hygiene and cough etiquette as well as other infection prevention and control practices such as appropriate hand hygiene.

- If the person is determined to be a danger to the patient or to be contrary to the welfare of the patient; or according to visitation policies established under § 20-6-411.

### **Hospice facility visitation**

The law includes this language which is specific to hospice facilities only and is codified at § 20-6-406.

A patient who is receiving hospice care or the guardian, spouse, or support person of a patient who is receiving hospice care may designate additional family members and friends who may be physically present with the patient at reasonable times.

### **Clergy and lay spiritual advisors**

The law includes minimum visitation requirements for visitation by spiritual advisors and is codified at § 20-6-408.

A clergy member or lay person offering religious or spiritual support may be physically present with a patient to pray with or offer spiritual support for the patient while the patient receives care in a healthcare facility.

### **Complaints**

Act 311 recognizes the complaint process and codifies the information at § 20-6-410.

An individual may file a complaint against a healthcare professional or healthcare facility for failing to comply with this subchapter with the appropriate state agency or licensing board, including the Department of Health and the Department of Human Services.

The appropriate state agency or licensing board shall investigate the complaint.

### **Visitation limits or restrictions**

Act 311 of 2011 identifies situations in which visitation may be restricted or limited. This information is codified at § 20-6-411.

A healthcare facility may establish visitation policies that limit or restrict visitation when:

The presence of visitors would be medically or therapeutically contraindicated.

The presence of visitors would interfere with the care of or rights of any patient.

Visitors are engaging in disruptive, threatening, or violent behavior toward any staff member, patient, or other visitor.

Visitors are noncompliant with healthcare facility policy.

### **Liability of healthcare facilities.**

The law provides additional content regarding provider liability codified at § 20-6-412.

Unless expressly required by federal law or regulation, a state survey agency or other state agency shall not take any action against a healthcare facility for:

Giving a visitor or other individual access to a healthcare facility, clinic, or other similar location under this law.

Failing to protect or otherwise ensure the safety or comfort of a visitor or other individual given access to a healthcare facility, clinic, or other similar location under this subchapter.

Failing to follow the Centers for Disease Control and Prevention or other national guidelines that require or recommend restricting visitor access.

The acts or omissions of any visitor or other individual who is given access to a healthcare facility, clinic, or similar location.

**Exceptions to the law**

Ark. Code Ann. § 20-6-413 states that this law does not apply to:

The Arkansas State Hospital.

A minor who is in the custody of the Division of Children and Family Services or a suspected victim in a pending maltreatment investigation.

An individual who is in the custody of the Department of Corrections or an individual who is attending a preventive healthcare office visit during which evidence-based guidelines for preventive care recommend a confidential visit component for youth, as mutually agreed to by the patient and his or her physician.

This law does not affect the rights of a legal guardian or holder of a power of attorney; or waive or change the long-term care facility residents' rights under § 20-10-1204.

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