

Act 33 of the 1989 Regular Session.

Act 33

SB31

By: Senator Bearden

"AN ACT TO AMEND TITLE 20, CHAPTER 10 OF THE ARKANSAS CODE OF 1987, TO PROHIBIT THE PHOTOGRAPHING OF A RESIDENT IN A LONG-TERM CARE FACILITY WITHOUT CONSENT, AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 20-10-1003(b) is hereby amended to read as follows:

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

- (1) The right to exercise all constitutional and legal rights.
- (2) The right to a safe and clean environment.
- (3) The right to dignity and respect.
- (4) The right to nursing and medical care.
- (5) The right to personal cleanliness.
- (6) The right to choose at their own expense a personal physician and pharmacist.
- (7) The right to have knowledge and input into medical treatment, records and plan of care.
- (8) The right to refuse experimental treatment.
- (9) The right to confidentiality of medical records.
- (10) The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may be imposed only to ensure the physical safety of the resident or other residents and only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used except for emergency conditions until such an order could reasonably be obtained.
- (11) The right to exercise civil liberties including the right to vote.
- (12) The right to the free exercise of religion including the right to rely on spiritual means for treatment.
- (13) The right to privacy, including the right to refuse being photographed by persons other than those licensed under the Medical Practices Act, Ark. Code 17-93-201 to 17-93-411, and any amendments thereto.
- (14) The right to personal clothing and belongings.
- (15) The right to personal financial information."

SECTION 2. (a) Except as provided in (d) or (e) below, no resident of a long-term care facility in this state may be photographed without obtaining prior written consent from the resident or, in cases of incapacity, from the resident's guardian or legal representative.

(b) Consent must be obtained for each date that photographs are to be

taken.

(c) Failure to obtain consent prior to photographing a resident in a long-term care facility shall be a class B misdemeanor.

(d) Nothing herein shall be construed to prevent a person licensed under the Medical Practices Act from photographing a patient for purposes of medical treatment.

(e) In cases where a long-term care facility or any employee of a long-term care facility has custody or legal guardianship of a Medicaid recipient, nothing herein shall be construed to prevent representatives of the Department of Human Services, the United States Department of Health and Human Services, or the Office of the Attorney General from taking photographs of the recipient without written consent while investigating circumstances which would constitute class A or B violations. Under such circumstances, the photographs shall be used only for evidentiary purposes in proceedings concerning the alleged violations and shall not be released to the media or to the public.

SECTION 3. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revisions commission shall incorporate the same in the Code.

SECTION 4. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: February 10, 1989

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