

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019

A Bill

HOUSE BILL 1951

4
5 By: Representative M. Gray

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS HEALTHCARE DECISIONS
9 ACT; AND FOR OTHER PURPOSES.

Subtitle

12 TO AMEND THE ARKANSAS HEALTHCARE
14 DECISIONS ACT.

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code § 9-20-120(b)(2), concerning duties and
20 responsibilities of custodians under the Adult Maltreatment Custody Act, is
21 amended to read as follows:

22 (2) Consent to withholding life-saving treatment, unless the
23 consent is provided consistent with and in accordance with an advance
24 directive;

25
26 SECTION 2. Arkansas Code § 20-6-105(c)(4) and (5), concerning the
27 designation of a surrogate under the Arkansas Healthcare Decisions Act, are
28 amended to read as follows:

29 (4) When identifying the person best qualified to serve as the
30 surrogate for the principal, the supervising healthcare provider may proceed
31 in order of descending preference for service as a surrogate to:

- 32 (A) The principal's spouse, unless legally separated;
33 (B) The principal's adult child;
34 (C) The principal's parent;
35 (D) The principal's adult sibling;
36 (E) Any other adult relative of the principal; ~~or~~



1 (F) A representative of the Adult Protective Services Unit
 2 of the Department of Human Services; or

3 (G) Any other adult person who satisfies the requirements
 4 of subdivision (c)(2) of this section.

5 (5) If none of the individuals eligible to act as a surrogate
 6 under this subsection are reasonably available and informed consent would
 7 typically be sought from the principal, the supervising healthcare provider
 8 may make healthcare decisions for the principal after the supervising
 9 healthcare provider:

10 (A) Consults with and obtains the recommendations of an
 11 institution's ethics officers or ethics committee; or

12 (B) Obtains concurrence from a ~~second~~ physician who is:

13 (i) Not directly involved in the principal's health
 14 care;

15 (ii) Does not serve in a capacity of decision
 16 making, influence, or responsibility over the designated ~~physician~~
 17 supervising healthcare provider; and

18 (iii) Does not serve in a capacity under the
 19 authority of the designated physician's decision making, influence, or
 20 responsibility.

21
 22 SECTION 3. Arkansas Code § 20-6-107(a), concerning the requirement of
 23 a guardian to comply with principal's individual instruction, is amended to
 24 read as follows:

25 (a) Absent a court order to the contrary, a guardian, surrogate, or
 26 supervising healthcare provider shall comply with the principal's individual
 27 instructions and shall not revoke the principal's advance directive.

28
 29 SECTION 4. Arkansas Code § 20-6-109(a)(2), concerning compliance by a
 30 healthcare provider or institution, is amended to read as follows:

31 (2)(A) A healthcare decision for the principal made by a person
 32 authorized to make healthcare decisions for the principal to the same extent
 33 as if the decision had been made by the principal while having capacity if
 34 the healthcare decision is not contrary to the principal's advance directive.

35 (B) However, an individual authorized to make healthcare
 36 decisions for a principal may make a healthcare decision that is contrary to

1 a written advance directive if:

2 (i) The individual acts in good faith and provides
 3 evidence that the principal expressed a contrary intention after the
 4 execution of the advance directive; or

5 (ii) Circumstances have materially changed that a
 6 deviation from the express terms of an advance directive is consistent with
 7 current medical best practices and advisable for the health and welfare of
 8 the patient.

9
 10 SECTION 5. Arkansas Code § 20-6-111(b), concerning the liability under
 11 the Arkansas Healthcare Decisions Act, is amended to read as follows:

12 (b) ~~As~~ A supervising healthcare provider, an ethics board member, or
 13 an individual acting as an agent or a surrogate under this subchapter is not
 14 subject to civil or criminal liability or to discipline for unprofessional
 15 conduct for healthcare decisions made in good faith.

16
 17 SECTION 6. Arkansas Code § 20-6-112(b), concerning the presumption of
 18 capacity under the Arkansas Healthcare Decisions Act, is amended to read as
 19 follows:

20 (b) ~~As~~ Unless an individual has been determined to lack capacity under
 21 § 20-6-108 or other applicable law, an individual is presumed to have
 22 capacity to make a healthcare decision, to give or revoke an advance
 23 directive, and to designate or disqualify a surrogate.

24
 25 SECTION 7. Arkansas Code § 20-6-115(b), concerning court jurisdiction
 26 under the Arkansas Healthcare Decisions Act, is amended to read as follows:

27 (b)(1) A proceeding under this section shall be expedited on the
 28 court's civil dockets and shall be addressed by the court within two (2)
 29 business days.

30 (2) If the court does not act within two (2) business days, the
 31 petition for relief shall be deemed granted.

32
 33 SECTION 8. Arkansas Code § 28-65-211(b)(1), concerning determination
 34 of incapacity and evidentiary requirements, is amended to read as follows:

35 (b)(1)(A) In determining the incapacity of a person for whom a
 36 guardian is sought to be appointed for cause other than minority,

1 disappearance, or detention, or confinement by a foreign power, the court
2 shall require that the evidence of incapacity ~~include the oral testimony or~~
3 be in the form of a sworn written statement of one (1) or more qualified
4 professionals, whose qualifications shall be set forth in their ~~testimony or~~
5 written statements.

6 (B) The qualified professional may make a statement of
7 incapacity through oral testimony.

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