

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas As Engrossed: H1/19/21 H2/1/21 H2/24/21

2 93rd General Assembly

# A Bill

3 Regular Session, 2021

HOUSE BILL 1061

4

5 By: Representatives J. Mayberry, Lundstrum, Crawford, Vaught, Bentley, Evans, Furman, Maddox, M.

6 McElroy, Miller, Richmond, Watson, *Brown, McKenzie, Gazaway, Payton, Penzo*

7 By: Senators B. Davis, K. Hammer, J. English, Irvin, A. Clark, Flippo, *T. Garner*

8

9

## For An Act To Be Entitled

10

AN ACT TO CREATE THE NO PATIENT LEFT ALONE ACT;

11

CONCERNING VISITATION RIGHTS OF PATIENTS; TO DECLARE

12

AN EMERGENCY; AND FOR OTHER PURPOSES.

13

14

15

## Subtitle

16

TO CREATE THE NO PATIENT LEFT ALONE ACT;

17

CONCERNING VISITATION RIGHTS OF PATIENTS;

18

AND TO DECLARE AN EMERGENCY.

19

20

21

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

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23

*SECTION 1. Arkansas Code Title 20, Chapter 6, is amended to add an additional subchapter to read as follows:*

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25

### Subchapter 4 – No Patient Left Alone Act

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#### 20-6-401. Title.

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This subchapter shall be known and may be cited as the "No Patient Left Alone Act".

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#### 20-6-402. Legislative findings.

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#### The General Assembly finds that:

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(1) The coronavirus 2019 (COVID-19) pandemic has caused great uncertainty and anxiety across the state and has significantly affected the medical community, including hospitals;

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1 (2) Healthcare facilities have made many efforts to maintain a  
2 safe environment for patients and employees and have worked to minimize, to  
3 the extent possible, the risk of spread of coronavirus 2019 (COVID-19);

4 (3) There have been unintended consequences of these  
5 preventative measures for patients who have not been diagnosed with  
6 coronavirus 2019 (COVID-19);

7 (4) Across the state, patients who have not been diagnosed with  
8 coronavirus 2019 (COVID-19) have been prohibited from having any visitors;

9 (5) As a result, many patients who were not diagnosed with  
10 coronavirus 2019 (COVID-19) have been required to be alone during their  
11 treatment for serious conditions, traumas, illnesses, and routine and  
12 emergency surgeries;

13 (6) Some of these patients have been required to be alone for  
14 the entire course of their treatment and in some cases have died alone;

15 (7) Many families have been unable to be physically present with  
16 their loved ones who are being treated in a healthcare facility and have been  
17 limited to electronic video communications, if any, with their loved ones;  
18 and

19 (8) It is in the interest of the state and its citizens that a  
20 patient be allowed at least one (1) support person who is permitted to be  
21 physically present with the patient on a daily basis at reasonable times  
22 throughout his or her hospitalization, visit to the office of a healthcare  
23 professional, or institutionalization.

24  
25 20-6-403. Definitions.

26 As used in this subchapter:

27 (1)(A) "Compassionate care visitation" means a visit with a  
28 friend or family member that is necessary to meet the physical or mental  
29 needs of a resident when a resident is exhibiting signs of physical or mental  
30 distress, including without limitation:

31 (i) End-of-life situations;

32 (ii) Adjustment support after moving to a new  
33 facility or environment;

34 (iii) Emotional support after the loss of a friend  
35 or family member;

36 (iv) Physical support after eating or drinking

1 issues, including weight loss or dehydration; or

2 (v) Social support after frequent crying, distress,  
3 or depression.

4 (B) "Compassionate care visitation" includes without  
5 limitation:

6 (i) Clergy members;

7 (ii) Lay persons offering religious or spiritual  
8 support;

9 (iii) Other persons requested by the resident for  
10 the purpose of a compassionate care visit; and

11 (iv) A person providing a service requested by the  
12 resident such as a hair dresser or barber;

13 (2) "Healthcare facility" means a hospital, an office of a  
14 healthcare professional, a long-term care facility, or a hospice facility;

15 (3) "Healthcare professional" means a person who is licensed,  
16 certified, or otherwise authorized by the laws of this state to administer  
17 health care in the ordinary course of the practice of his or her profession;

18 (4) "Long-term care facility" means:

19 (A) A nursing home;

20 (B) A residential care facility;

21 (C) A post-acute head injury retraining and residential  
22 facility;

23 (D) An intermediate care facility for individuals with  
24 developmental disabilities;

25 (E) An assisted living facility; or

26 (F) A facility that provides long-term medical or personal  
27 care;

28 (5) "Other individuals given access" means persons other than  
29 patients and residents of a healthcare facility;

30 (6) "Patient with a disability" means a patient who needs  
31 assistance to effectively communicate with hospital staff, make healthcare  
32 decisions, or engage in activities of daily living due to a disability such  
33 as:

34 (A) A physical, intellectual, behavioral, or cognitive  
35 disability;

36 (B) Deafness, being hard of hearing, or other

1 communication barriers;

2 (C) Blindness;

3 (D) Autism spectrum disorder; or

4 (E) Dementia; and

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

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9  
10 20-6-404. Visitation and support for a patient with a disability.

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

20 (1) Has a cognitive or mental health disability that affects the  
21 ability of a patient with a disability to make medical decisions or  
22 understand medical advice;

23 (2) Needs assistance with activities of daily living and the  
24 staff are unable to provide or are less effective at providing the  
25 assistance;

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

29 (4) Has behavioral health needs that the support person can  
30 address more effectively than the staff; or

31 (5) Is making a decision to consent to treatment or refuse  
32 treatment.

33 (b) A healthcare professional or healthcare facility shall not  
34 discriminate against a patient with a disability by requiring the patient  
35 with a disability to:

36 (1) Execute an advance directive or a physician order for life-

1 sustaining treatment as a condition of receiving treatment or visitation; or

2 (2) Agree to a do-not-resuscitate or similar order as a  
3 condition of receiving treatment or visitation.

4 (c) This section does not affect any obligation of a healthcare  
5 professional or healthcare facility to:

6 (1) Provide patients with effective communication supports or  
7 other reasonable accommodations in accordance with federal and state laws; or

8 (2) Make exceptions to the visitor policy of a healthcare  
9 facility as a reasonable accommodation under the Americans with Disabilities  
10 Act of 1990, 42 U.S.C. § 12101 et seq., as existing on January 1, 2021.

11  
12 20-6-405. Hospital or office of healthcare professional visitation.

13 (a)(1) A child has the right to have a parent, legal guardian, or  
14 person standing in loco parentis physically present with the child while the  
15 child receives care in a hospital or an office of a healthcare professional.

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

19 (3) A person with a right to be physically present under  
20 subdivisions (a)(1) and (2) of this section may leave and return to the  
21 hospital or office of a healthcare professional that is caring for the  
22 patient.

23 (b) A hospital or an office of a healthcare professional shall not:

24 (1) Require a patient to waive the rights specified in  
25 subdivisions (a)(1) and (2) of this section;

26 (2) Prevent a parent, legal guardian, or person standing in loco  
27 parentis of a child receiving care in a hospital or an office of a healthcare  
28 professional from having daily physical access to the child at reasonable  
29 times; or

30 (3) Separate the parent, legal guardian, or person standing in  
31 loco parentis of a child receiving care in a hospital or an office of a  
32 healthcare professional from the child except in cases of suspected abuse or  
33 threats of violence or to prevent disruption to the care of the child.

34 (c) A hospital or an office of a healthcare professional may restrict  
35 access of any person to a patient:

36 (1) At the request of the patient or a law enforcement agency;

1 (2) Due to a court order;

2 (3) To prevent disruption to the care of the patient;

3 (4)(A) If the person has signs and symptoms of a transmissible  
4 infection.

5 (B) However, the hospital or office of a healthcare  
6 professional shall allow access through telephone, telecommunication means,  
7 or other means that ensure the protection of the patient.

8 (C) The person shall follow respiratory hygiene and cough  
9 etiquette as well as other infection prevention and control practices such as  
10 appropriate hand hygiene;

11 (5) If the person is determined to be a danger to the patient or  
12 to be contrary to the welfare of the patient; or

13 (6) According to visitation policies established under § 20-6-  
14 411.

15  
16 20-6-406. Hospice facility visitation.

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

21  
22 20-6-407. Long-term care facility visitation.

23 (a)(1) A long-term care facility shall allow compassionate care  
24 visitation as needed by the resident to alleviate physical or mental  
25 distress.

26 (2) Personal contact in person with a resident is permitted  
27 during a compassionate care visitation if the long-term care facility  
28 protocol is followed.

29 (3) A long-term care facility shall adopt a protocol for  
30 personal contact in person that adheres to appropriate infection prevention  
31 guidelines disseminated by the Centers for Disease Control and Prevention or  
32 the Centers for Medicare and Medicaid Services.

33 (b) A long-term care facility shall work with residents, families,  
34 caregivers, resident representatives, and medical providers, and may include  
35 the ombudsman program under § 20-10-602 to identify the need for  
36 compassionate care visitation, using a person-centered approach that takes

1 the residents requests into account.

2 (c)(1) A long-term care facility shall ensure that decisions regarding  
3 end-of-life care are made by a resident with capacity or by the  
4 representative of a resident without capacity, as provided in the Arkansas  
5 Healthcare Decisions Act, § 20-6-101 et seq.

6 (2) Within the scope of visitation provided by this section, a  
7 long-term care facility shall permit a resident making decisions regarding  
8 end-of-life care to be accompanied by a family member, guardian, or support  
9 person designated by the resident, unless the resident declines or requests  
10 to have the discussion outside of the presence of a family member, guardian,  
11 or support person.

12 (d)(1) Compassionate care visitation shall continue even if the  
13 infection rate in the county in which the long-term care facility is located  
14 is high.

15 (2) However, a long-term care facility shall identify one (1) or  
16 more ways to allow a compassionate care visitation, including personal  
17 contact, that minimize the risk of infection to the resident and other  
18 residents in the long-term care facility.

19 (3)(A) In a long-term care facility with no new onset of  
20 coronavirus 2019 (COVID-19) in the last fourteen (14) days and in counties  
21 with coronavirus 2019 (COVID-19) positivity rates that are less than ten  
22 percent (10%), a long-term care facility shall accommodate and support indoor  
23 visitation for reasons beyond compassionate care visitation.

24 (B) A long-term care facility may limit:

25 (i) The number of visitors per resident at one (1)  
26 time based on the size of the building and physical space; and

27 (ii) Movement in the long-term care facility, such  
28 as requiring the visitor to go directly to the resident's room or designated  
29 visitation area.

30 (C) Visits for residents who share a room shall not be  
31 conducted in a resident's room, unless the health status of the resident  
32 prevents leaving the room

33 (e) Healthcare workers who are not employees of the long-term care  
34 facility but provide direct care to a resident in the long-term care  
35 facility, such as hospice workers, emergency medical services personnel,  
36 dialysis technicians, laboratory technicians, radiology technicians, and

1 social workers, shall be permitted into the long-term care facility if proper  
2 infection control protocols are followed.

3 (f) A long-term care facility that fails to facilitate compassionate  
4 care visitation without adequate justification related to clinical necessity  
5 or resident safety may be in violation of 42 C.F.R. 483.10(f)(4), as it  
6 existed on January 1, 2021.

7 (g) To the extent permitted by state and federal law, the appropriate  
8 state agency or licensing board shall investigate and may penalize a long-  
9 term care facility's failure to comply with this section.

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11 20-6-408. Clergy member or lay person offering religious or spiritual  
12 support visitation.

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

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18 20-6-409. Informational materials.

19 (a)(1) Within thirty (30) days of the effective date of this act, the  
20 Department of Health and the Department of Human Services shall develop  
21 informational materials regarding this subchapter.

22 (2) The Department of Health and the Department of Human  
23 Services shall present informational materials regarding this subchapter to  
24 the:

25 (A) Senate Committee on Public Health, Welfare, and Labor;

26 (B) House Committee on Public Health, Welfare, and Labor;

27 and

28 (C) House Committee on Aging, Children and Youth,  
29 Legislative and Military Affairs.

30 (b) A healthcare facility shall make the informational materials  
31 regarding this subchapter accessible:

32 (1) Upon admission or registration; and

33 (2) On the website of the healthcare facility.

34 (c) Every sixty (60) days or upon the release of relevant federal  
35 guidelines, the Department of Health, with input from the long-term care  
36 industry and the hospital industry, shall reevaluate and update the



1 directives where needed to allow for the maximum visitation possible under  
2 federal guidelines.

3 (d) Information and directives produced by this state that provide  
4 guidance about visitation shall take into consideration and include the  
5 highest amount possible of privacy and dignity for interaction between  
6 patients and visitors.

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8 20-6-410. Complaints.

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

13 (b) The appropriate state agency or licensing board shall investigate  
14 the complaint.

15  
16 20-6-411. Visitation limits or restrictions.

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

19 (1) The presence of visitors would be medically or  
20 therapeutically contraindicated;

21 (2) The presence of visitors would interfere with the care of or  
22 rights of any patient;

23 (3) Visitors are engaging in disruptive, threatening, or violent  
24 behavior toward any staff member, patient, or other visitor; or

25 (4) Visitors are noncompliant with healthcare facility policy.

26  
27 20-6-412. Liability of healthcare facilities.

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

31 (1) Giving a visitor or other individual access to a healthcare  
32 facility, clinic, or other similar location under this subchapter;

33 (2) Failing to protect or otherwise ensure the safety or comfort  
34 of a visitor or other individual given access to a healthcare facility,  
35 clinic, or other similar location under this subchapter;

36 (3) Failing to follow the Centers for Disease Control and

1 Prevention or other national guidelines that require or recommend restricting  
2 visitor access; or

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

5 (b) This section does not apply to courts or the judicial branch.

6  
7 20-6-413. Construction.

8 (a) This subchapter does not apply to:

9 (1) The Arkansas State Hospital;

10 (2) A minor who is:

11 (A) In the custody of the Division of Children and Family  
12 Services; or

13 (B) A suspected victim in a pending maltreatment  
14 investigation;

15 (3) An individual who is in the custody of the Department of  
16 Corrections; or

17 (4) An individual who is attending a preventive healthcare  
18 office visit during which evidence-based guidelines for preventive care  
19 recommend a confidential visit component for youth, as mutually agreed to by  
20 the patient and his or her physician.

21 (b) This subchapter does not:

22 (1) Affect the rights of a legal guardian or holder of a power  
23 of attorney; or

24 (2) Waive or change the long-term care facility residents'  
25 rights under § 20-10-1204.

26 (c) The requirements under this subchapter shall be established as a  
27 minimum for visitation in a healthcare facility but does not limit visitation  
28 at a healthcare facility to only visitation outlined in this subchapter.

29 (d) The rights specified in this subchapter shall not be terminated,  
30 suspended, or waived by:

31 (1) A healthcare facility;

32 (2) The Department of Health;

33 (3) The State Board of Health;

34 (4) The Department of Human Services; or

35 (5) The Governor upon declaring a disaster emergency under the  
36 Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., or ordering the

1 board to take action under § 20-7-110, or both.

2  
3 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
4 General Assembly of the State of Arkansas that the coronavirus 2019 (COVID-  
5 19) pandemic has caused great uncertainty and anxiety across the state and  
6 has significantly affected the medical community, including hospitals; that  
7 across the state, patients who have not been diagnosed with coronavirus 2019  
8 (COVID-19) have been prohibited from having any visitors which has resulted  
9 in many patients who were not diagnosed with coronavirus 2019 (COVID-19)  
10 being required to be alone during their treatment for serious conditions,  
11 traumas, illnesses, and routine and emergency surgeries; that some of these  
12 patients have been required to be alone for the entire course of their  
13 treatment and in some cases have died alone; and that this act is immediately  
14 necessary to ensure that a patient is allowed at least one (1) support person  
15 who is permitted to be physically present with the patient on a daily basis  
16 at reasonable times throughout the patient's hospitalization or  
17 institutionalization and who is permitted to accompany the patient when the  
18 patient visits the office of a healthcare professional. Therefore, an  
19 emergency is declared to exist, and this act being immediately necessary for  
20 the preservation of the public peace, health, and safety shall become  
21 effective on:

22 (1) The date of its approval by the Governor;

23 (2) If the bill is neither approved nor vetoed by the Governor,  
24 the expiration of the period of time during which the Governor may veto the  
25 bill; or

26 (3) If the bill is vetoed by the Governor and the veto is  
27 overridden, the date the last house overrides the veto.

28  
29 /s/J. Mayberry  
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