

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2518

"AN ACT TO PROVIDE THAT RESIDENTS OF LONG-TERM CARE FACILITIES HAVE
THE RIGHT TO HAVE THEIR ADVANCE DIRECTIVES HONORED."

Amendment No. 1 to House Bill No. 2518.

Amend House Bill No. 2518 as engrossed, H3/1/01:

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code 20-10-1204(a) is amended to read as follows:

(a) All long-term care facilities shall adopt and make public a statement of the rights and responsibilities of the residents of the facilities and shall treat the residents in accordance with the provisions of that statement. The statement shall assure each resident of the following:

(1) The right to be fully informed in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility;

(2) The right to examine at any time the results which the facility shall post of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility;

(3) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents;

(4)(A) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee but only to the extent of the funds held in trust by the licensee for the resident.

(B) The facility may not require a resident to deposit personal funds with the facility.

(C) However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

(i) The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles or regulations established by the Office of Long-Term Care, of each resident's personal funds entrusted to the

facility on the resident's behalf;

(ii) The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than a resident;

(iii) An annual accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident; and

(iv) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act;

(D) An annual accounting of any transactions made on behalf of the resident shall be furnished to the resident or to the person responsible for the resident;

(5)(A) The right to freedom of choice in selecting a personal physician, to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act, and to obtain information about and to participate in community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record.

(B)(i) If a resident chooses to use a community pharmacy and if the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one (1) that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long-term care residents.

(ii) If a resident chooses to use a community unit-dose system, and if the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one (1) that provides service delivery and stocks the drugs normally used by the long-term care residents;

(6) The right to be adequately informed of his or her medical condition and proposed treatment unless the resident is determined to be unable to provide informed consent under Arkansas law, the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being, and except with respect to a resident adjudged incompetent the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment unless otherwise indicated by the resident's physician and to know the consequences of such actions;

(7)(A) The right to refuse medication or treatment and to be informed of the consequences of such decisions unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record.

(B) The facility must continue to provide other services the resident agrees to in accordance with the resident's care plan;

(8)(A) The right to have his or her advance directive honored if the resident is incompetent to decide for his or herself, including the withholding or withdrawal of nutrition and hydration if they are necessary for the alleviation of pain.

(B) If the resident has not executed an advance directive, then the wishes of the resident's responsible decision-maker as described in

§§ 20-9-602 and 20-17-214 shall be honored based upon a substituted judgment analysis or the best interests of the patient analysis. If there is no responsible decision-maker, or in the case of disagreement among the responsible decision-makers, then the decision of the resident's physician will control, based on the best interests of the resident;

~~(8)~~(9) The right to receive adequate and appropriate health care and protective and support services, including social services, mental health services, if available, planned recreational activities, and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency;

~~(9)~~(10) The right to have privacy in treatment and in caring for personal needs, to close room doors and to have facility personnel knock before entering the room except in the case of an emergency or unless medically contraindicated, and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

~~(10)~~(11) The right to receive notice before the room of the resident in the facility is changed;

~~(11)~~(12)(A) The right to be informed of the bed reservation policy for a hospitalization.

(B)(i) The facility shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to thirty (30) days provided the facility receives reimbursement.

(ii) Any resident who is a recipient of assistance under Title XIX of the Social Security Act or the resident's designee or legal representative shall be informed by the licensee that his or her bed for which there is Title XIX reimbursement available will be reserved up to five (5) days but that the bed will not be reserved if it is medically determined by a physician that the resident will not need it or will not be able to return to the facility or if the agency determines that the facility's occupancy rate ensures the availability of a bed for the resident.

(C) Notice shall be provided within twenty-four (24) hours of hospitalization;

~~(12)~~(13)(A) The right to be transferred or discharged only for medical reasons or for the welfare of other residents and the right to be given reasonable advance notice of no less than thirty (30) days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the facility or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act.

(B) For nonpayment of a bill for care received, the resident shall be given thirty (30) days advance notice.

(C)(i) A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes.

(ii) Admission to a facility operated by a licensee may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable.

(iii) Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver of a resident's rights as established herein is subject to disciplinary action as provided in subdivision (a)(16)(A)(ii) of this section.

(D) The resident and the family or representative of the resident shall be consulted in choosing another facility;

~~(13)~~(14) For residents of Medicaid-certified or Medicare-certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. Part 488.12;

~~(14)~~(15)(A) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency.

(B)(i) In the case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter.

(ii) Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety;

~~(15)~~(16)(A) The right to retain and use personal clothing and possessions as space permits unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician.

(B) If clothing is provided to the resident by the licensee, it shall be of reasonable fit;

~~(16)~~(17)(A)(i) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII and Title XIX of the Social Security Act regulations, without the resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends.

(ii) Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident. Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident.

(B) The resident has the right to deny or withdraw consent to access at any time by any entity or individual.

(C) Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

(i) Any representative of the federal or state government, including, but not limited to, representatives of the Department of Human Services, any law enforcement officer, any ombudsman, and the resident's individual physician; and

(ii) Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident;

~~(17)~~~~(18)~~(A)(i) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, freedom from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

(ii) The facility must allow any ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(B) The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents;

~~(18)~~~~(19)~~ The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents;

~~(19)~~~~(20)~~ The right to participate in social, religious, and community activities that do not interfere with the rights of other residents;

~~(20)~~~~(21)~~ The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decisions which will not be infringed upon and the right to encouragement and assistance from the staff of the facility in the exercise of these rights; and

~~(21)~~~~(22)~~ The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

SECTION 2. Arkansas Code Title 20, Chapter 10, Subchapter 10 is amended to add an additional section to read as follows:

20-10-1010. Provision of nutrition and hydration.

(a) It shall be a rebuttable presumption that every resident, who is unable to make health care decisions, has directed his or her healthcare provider to provide nutrition and hydration to the extent that it is sufficient to sustain life.

(b) Notwithstanding any other provision of law, the presumption of nutrition and hydration shall not apply if:

(1) The attending physician of the resident determines, or a court finds by a preponderance of evidence, that the resident, if competent to decide, would have refused artificially administered nutrition or artificially administered hydration. An advance directive for health care executed by the resident shall satisfy the provisions of this subdivision; or

(2) In the reasonable medical judgment of the incompetent

resident's attending physician artificially administered nutrition or artificially administered hydration will itself cause severe, intractable, and long-lasting pain to the incompetent resident or such nutrition or hydration is not medically possible.

(c) No person and no healthcare facility shall be required to honor a resident's wish to withhold or withdraw nutrition or hydration, but shall have the duty to take all reasonable steps to transfer care of the resident to another person or healthcare provider.

The Amendment was read _____
By: Representative Bradford
LH/RRS _____
RRS635 **Chief Clerk**