

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1626

5 By: Representative Pilkington
6 By: Senator Flippo
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE PROHIBITION OF PHOTOGRAPHY IN
10 LONG-TERM CARE FACILITIES; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO AMEND THE PROHIBITION OF PHOTOGRAPHY
14 IN LONG-TERM CARE FACILITIES.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 20-10-104 is amended to read as follows:

21 20-10-104. Photographing prohibited – Exceptions.

22 (a) Except as provided in subsection (d) or subsection (e) of this
23 section, ~~no~~ a resident of a long-term care facility in this state ~~may~~ shall
24 not be photographed without obtaining prior written consent from the resident
25 or, in cases of incapacity, from the ~~resident's~~ guardian or legal
26 representative of the resident.

27 (b)(1) ~~Consent shall be obtained for each date that photographs are to~~
28 ~~be taken~~ When an employee or agent of a long-term care facility photographs a
29 resident under conditions in which consent is required, the evidence of the
30 consent shall be maintained in the file of the resident at the long-term care
31 facility.

32 (2) The consent described in subdivision (b)(1) of this section
33 shall be continuously effective unless the consent is rescinded in writing by
34 the resident or the guardian or legal representative of the resident.

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



1 (d) ~~Nothing in this~~ This section ~~shall be construed to~~ does not
 2 prevent:

3 (1) a A person licensed under the Arkansas Medical Practices
 4 Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., from
 5 photographing a patient for purposes of medical treatment;

6 (2) A person licensed by the Arkansas State Board of Nursing
 7 from photographing a patient for purposes of medical treatment;

8 (3) Facility staff or agents from photographing a resident of a
 9 long-term care facility on social occasions; or

10 (4) A photograph by security cameras or other devices for the
 11 safety or security of residents.

12 (e)(1) The photographing of residents is ~~prohibited~~ permitted without
 13 written consent from the resident or the ~~resident's~~ guardian or legal
 14 representative ~~except~~ of the resident when the photographing is in connection
 15 with a survey or investigation made by the Department of Human Services, the
 16 Office of the Attorney General, or the United States Department of Health and
 17 Human Services, or any agent of the listed entities while in+

18 (A) ~~In~~ the course of:

19 (i) ~~(A)~~ Licensure inspections;

20 (ii) ~~(B)~~ Medicaid certification;

21 (iii) ~~(C)~~ A complaint investigation; or

22 (iv) ~~(D)~~ An investigation of allegations of abuse or
 23 neglect of residents or misappropriation of residents' property; ~~or.~~

24 (B) ~~In connection with surveys or investigations made~~
 25 ~~pursuant to law conducted by the:~~

26 (i) ~~Office of Long-Term Care;~~

27 (ii) ~~Office of the Attorney General; or~~

28 (iii) ~~United States Department of Health and Human~~
 29 ~~Services.~~

30 (2) Under ~~those~~ the circumstances listed in subdivision (e)(1)
 31 of this section, the photographs shall be used only for evidentiary purposes
 32 concerning the alleged violations and shall not be released to the media or
 33 to the public but shall be made available to the facility if utilized to
 34 impose a remedy or to set forth a statement of deficiency.