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2 91st General Assembly
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4

As Engrossed: S3/16/17

A Bill

SENATE BILL 676

5 By: Senator Irvin
6

For An Act To Be Entitled

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

Subtitle

10 TO AMEND THE ARKANSAS HEALTHCARE
11 DECISIONS ACT.
12

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 *SECTION 1. Arkansas Code §§ 20-6-102 – 20-6-108 is amended to read as*
20 *follows:*

21 *20-6-102. Definitions.*

22 *As used in this subchapter:*

23 *(1) "Advance directive" means an individual instruction or a*
24 *written statement that anticipates and directs the provision of health care*
25 *for an individual, including without limitation a living will or a durable*
26 *power of attorney for health care;*

27 *(2) "Agent" means an individual designated in an advance*
28 *directive ~~for health care~~ to make a healthcare decision for the individual*
29 *granting the power;*

30 *(3) "Capacity" means an individual's ability to understand the*
31 *significant benefits, risks, and alternatives to proposed health care and to*
32 *make and communicate a healthcare decision;*

33 *(4)(A) ~~"Designated physician" means a physician designated by an~~*
34 *~~individual or the individual's agent, guardian, or surrogate to have primary~~*
35 *~~responsibility for the individual's health care or, in the absence of a~~*
36 *~~designation or if the designated physician is not reasonably available, a~~*



1 ~~physician who undertakes responsibility for the individual's health care;~~
 2 "Durable power of attorney for health care" means a written advance directive
 3 that identifies an agent who is authorized to make healthcare decisions on
 4 behalf of the principal.

5 (B) "Durable power of attorney for health care" includes
 6 without limitation a document appointing a healthcare proxy executed under §
 7 20-17-202;

8 (5) "Emancipated minor" means a minor who has been emancipated
 9 under § 9-27-362;

10 ~~(5)(6)~~ "Emergency responder" means a paid or volunteer
 11 firefighter, law enforcement officer, or other public safety official or
 12 volunteer acting within the scope of his or her proper function or rendering
 13 emergency care at the scene of an emergency;

14 ~~(6)(7)~~ "Guardian" means a judicially appointed guardian or
 15 conservator having authority to make a healthcare decision for an individual;

16 ~~(7)(8)~~ "Health care" means any care, treatment, service, or
 17 procedure to maintain, diagnose, treat, or otherwise affect an individual's
 18 physical or mental condition, including medical care;

19 ~~(8)(9)~~ "Healthcare decision" means consent, refusal of consent,
 20 or withdrawal of consent to health care;

21 ~~(9)(10)(A)~~ "Healthcare institution" means an agency,
 22 institution, facility, or place, whether publicly or privately owned or
 23 operated, that provides health services, ~~and that is one (1) of the~~
 24 ~~following:~~ medical treatment, or nursing or rehabilitative care to a person.

25 (B) "Healthcare institution" includes without limitation:

26 ~~(A)(i)~~ An ambulatory surgical ~~treatment center~~
 27 facility;

28 ~~(B)(ii)~~ A birthing center;

29 ~~(C)(iii)~~ A home ~~care organization~~ health agency;

30 ~~(D)(iv)~~ A hospital;

31 ~~(E)(v)~~ An ~~intellectual disability institutional~~
 32 ~~habilitation facility~~ intermediate care facility for individuals with
 33 intellectual disabilities;

34 ~~(F)(vi)~~ A mental health ~~hospital~~ center;

35 ~~(G)~~ A ~~nonresidential substitution based treatment~~
 36 ~~center for opiate addiction;~~

- 1 (vii) An assisted living facility;
2 ~~(H)(viii)~~ A nursing home;
3 ~~(I)(ix)~~ An outpatient diagnostic center;
4 ~~(J)~~ A recuperation center;
5 (x) A residential treatment facility;
6 ~~(K)(xi)~~ A rehabilitation facility; ~~or~~ and
7 ~~(L)(xii)~~ A residential hospice;
- 8 ~~(10)(11)~~ "Healthcare provider" means a person who is licensed,
9 certified, or otherwise authorized by the laws of this state to administer
10 health care in the ordinary course of the practice of his or her profession;
- 11 ~~(11)(12)~~ "Individual instruction" means an individual's
12 direction concerning a healthcare decision for the individual;
- 13 (13)(A) "Living will" means a written advance directive
14 describing the principal's individual instructions for health care to be
15 provided or withheld in the event that the principal subsequently lacks
16 decision-making capacity.
- 17 (B) "Living will" includes without limitation a
18 declaration executed under § 20-17-202;
- 19 ~~(12)(14)~~ "Medical care" means the diagnosis, cure, mitigation,
20 treatment, or prevention of disease for the purpose of affecting any
21 structure or function of the body;
- 22 ~~(13)(15)~~ "Person" means an individual, corporation, estate,
23 trust, partnership, association, joint venture, government, governmental
24 subdivision, agency, instrumentality, or any other legal or commercial
25 entity;
- 26 ~~(14)(16)~~ "Person authorized to consent on the principal's
27 behalf" means:
- 28 (A) A person authorized by law to consent on behalf of the
29 principal when the principal is incapable of making an informed decision; or
30 (B) In the case of a minor child, the parent or parents
31 having custody of the child, the child's legal guardian, or another person as
32 otherwise provided by law;
- 33 ~~(15)(17)~~ "Personally inform" means to communicate by any
34 effective means from the principal directly to a healthcare provider;
- 35 ~~(16)(18)~~ "Physician" means an individual authorized to practice
36 medicine or osteopathy in this state;

1 ~~(17) “Power of attorney for health care” means the authority of~~
 2 ~~an agent to make healthcare decisions for the individual granting the power;~~

3 ~~(18)~~(19) “Principal” means an individual who grants authority to
 4 ~~an~~ another individual under this subchapter;

5 ~~(19)~~(20) “Qualified emergency medical service personnel”
 6 includes without limitation emergency medical technicians, paramedics, or
 7 other emergency services personnel, providers, or entities acting within the
 8 usual course of their professions, and other emergency responders;

9 ~~(20)~~(21) “Reasonably available” means readily able to be
 10 contacted without undue effort and willing and able to act in a timely manner
 11 considering the urgency of the principal’s healthcare needs, including
 12 without limitation availability by telephone;

13 ~~(21)~~(22) “State” means a state of the United States, the
 14 District of Columbia, the Commonwealth of Puerto Rico, or a territory or
 15 insular possession subject to the jurisdiction of the United States;

16 ~~(22)~~(23) “Supervising healthcare provider” means ~~the designated~~
 17 ~~physician or, if there is no designated physician or the designated physician~~
 18 ~~is not reasonably available, the~~ a licensed physician or other authorized
 19 independent healthcare provider who has undertaken primary responsibility for
 20 an individual’s health care;

21 ~~(23)~~(24) “Surrogate” means an individual, other than a
 22 principal’s agent or guardian, authorized under this subchapter to make a
 23 healthcare decision for the principal; and

24 ~~(24)~~(25) “Treating healthcare provider” means a healthcare
 25 provider who is directly or indirectly involved in providing health care to
 26 the principal; ~~and~~

27 ~~(25) “Universal Do Not Resuscitate Order” means a written order~~
 28 ~~that applies regardless of the treatment setting and that is signed by the~~
 29 ~~principal’s physician that states that in the event the principal suffers~~
 30 ~~cardiac or respiratory arrest, cardiopulmonary resuscitation should not be~~
 31 ~~attempted.~~

32
 33 20-6-103. Oral or written individual instructions – Advance directive
 34 for health care – When effective – Decisions based on best interest
 35 assessment – Out-of-state directives – Construction.

36 (a)(1)(A) An adult, married minor, or emancipated minor may make

1 healthcare decisions for himself or herself and give an individual
2 instruction.

3 (B) A person who is authorized to consent on behalf of a
4 principal may make healthcare decisions for the principal and may give an
5 individual instruction.

6 (2) The instruction may be oral or written.

7 (3) The instruction may be limited to take effect only if a
8 specified condition arises.

9 (b)(1) An adult, married minor, or emancipated minor may execute ~~an~~
10 ~~advance directive~~ a durable power of attorney for health care that authorizes
11 ~~the~~ an agent to make a healthcare decision that the principal could make if
12 he or she had capacity.

13 (2) ~~An advance directive~~ A durable power of attorney for health
14 care shall be in writing and signed by the principal.

15 (3) A durable power of attorney for health care remains in
16 effect notwithstanding the principal's latest incapacity and may include a
17 living will or other individual instructions.

18 (c)(1) An advance directive, including without limitation a living
19 will or durable power of attorney for health care, shall be either notarized
20 or witnessed by two (2) witnesses.

21 ~~(4)~~(2) For the purposes of this subsection a witness shall be a
22 competent adult who is not the agent and at least one (1) of whom is not
23 related to the principal by blood, marriage, or adoption and who would not be
24 entitled to any portion of the estate of the principal upon the death of the
25 principal under any will or codicil made by the principal existing at the
26 time of execution of the advance directive or by operation of law.

27 ~~(5)~~(3) A written advance directive, including without limitation
28 a living will or durable power of attorney for health care, that is witnessed
29 shall contain an attestation clause that attests that the witnesses comply
30 with this subsection.

31 ~~(6) An advance directive remains in effect notwithstanding the~~
32 ~~principal's last incapacity and may include individual instructions.~~

33 ~~(7)~~(4) ~~An~~ A written advance directive may include the
34 principal's nomination of a guardian of the principal.

35 ~~(e)~~(d) Unless otherwise specified in an advance directive, the
36 authority of an agent becomes effective only upon a determination that the

1 principal lacks capacity, and ceases to be effective upon a determination
2 that the principal has recovered capacity.

3 ~~(d)(1)~~(e)(1) If necessary, ~~the designated~~ a licensed physician shall
4 determine whether a principal lacks or has recovered capacity or that another
5 condition exists that affects an individual instruction or the authority of
6 an agent.

7 (2) In making a determination under subdivision ~~(d)(1)~~ (e)(1) of
8 this section, ~~the designated~~ a licensed physician may consult with other
9 persons as he or she deems appropriate.

10 ~~(e)(1)~~(f)(1) An agent shall make a healthcare decision in accordance
11 with the principal's individual instructions and other wishes to the extent
12 known to the agent.

13 (2)(A) In the absence of individual instructions or other
14 information, the agent shall make the decision in accordance with the agent's
15 determination of the principal's best interest.

16 (B) In determining the principal's best interest, the
17 agent shall consider the principal's personal values to the extent known to
18 the agent.

19 ~~(f)~~(g) A healthcare decision made by an agent for a principal is
20 effective without judicial approval.

21 ~~(g)~~(h) An advance directive that is executed outside of this state ~~by~~
22 ~~a nonresident of this state~~ shall be given effect in this state if, at the
23 time of execution, ~~if~~ the advance directive complies with either this
24 subchapter or the laws of the state ~~of the principal's residence~~ in which the
25 advance directive was executed.

26 ~~(h)~~(i) A healthcare provider, healthcare institution, healthcare
27 service plan, insurer issuing disability insurance, self-insured employee
28 welfare benefit plan, or nonprofit hospital plan shall not require the
29 execution or revocation of an advance directive as a condition of the
30 principal's being insured for or receiving health care.

31
32 20-6-104. Revocation of the designation of agent – Revocation of
33 advance directive – Spouse as agent – Conflicts.

34 (a) A principal having capacity may revoke all or part of an advance
35 directive, ~~other than the designation of an agent~~, including without
36 limitation a living will, durable power of attorney for health care, or other

1 document, at any time and in any manner that communicates an intent to
2 revoke.

3 ~~(b) A principal having capacity may revoke the designation of an agent~~
4 ~~only by a signed written statement or by personally informing the supervising~~
5 ~~healthcare provider.~~

6 ~~(e)(b)~~ A decree of annulment, divorce, dissolution of marriage, or
7 legal separation revokes a previous designation of a spouse as agent unless
8 otherwise specified in the decree or in an advance directive.

9 ~~(d)(c)~~ An advance directive that conflicts with an earlier advance
10 directive revokes the earlier directive to the extent of the conflict.

11 (d) A healthcare provider, agent, guardian, or surrogate who is
12 informed of a revocation shall promptly communicate the fact of the
13 revocation to the supervising healthcare provider and any healthcare
14 institution at which the patient is receiving care.

15

16 20-6-105. Designation of surrogate.

17 (a)(1) An adult, married minor, or emancipated minor may designate an
18 individual to act as surrogate by personally informing the supervising
19 healthcare provider.

20 (2) The designation may be oral or written.

21 (b) A surrogate may make a healthcare decision for a principal who is
22 an adult or emancipated minor only if:

23 (1) The principal has been determined by ~~the designated a~~
24 licensed physician to lack capacity; and

25 (2) An agent or guardian has not been appointed or the agent or
26 guardian is not reasonably available.

27 (c)(1) The supervising healthcare provider shall ~~designate~~ identify a
28 surrogate for the principal and document the appointment in the clinical
29 record of the institution or institutions at which the principal is receiving
30 health care if the principal:

31 (A) Lacks capacity;

32 (B) Has not appointed an agent or the agent is not
33 reasonably available;

34 (C) Has not designated a surrogate or the surrogate is not
35 reasonably available; and

36 (D) Does not have a guardian or the guardian is not

1 reasonably available.

2 (2)(A) The principal's surrogate shall be an adult who:

3 (i) Has exhibited special care and concern for the
4 principal;

5 (ii) Is familiar with the principal's personal
6 values;

7 (iii) Is reasonably available; and

8 (iv) Is willing to serve.

9 (B) A person who is the subject of a protective order or
10 other court order that directs that person to avoid contact with the
11 principal is not eligible to serve as the principal's surrogate.

12 (3) In ~~designating~~ identifying the person best qualified to
13 serve as the surrogate for the principal, the supervising healthcare
14 provider:

15 (A) shall ~~shall~~ consider the proposed surrogate's:

16 ~~(A)(i)~~ Ability to make decisions either in accordance with
17 the known wishes of the principal or in accordance with the principal's best
18 interests;

19 ~~(B)(ii)~~ Frequency of contact with the principal before and
20 during the incapacitating illness; and

21 ~~(C)(iii)~~ Demonstrated care and concern; and

22 (B) May consider the proposed surrogate's:

23 ~~(D)(i)~~ Availability to visit the principal during his or
24 her illness; and

25 ~~(E)(ii)~~ Availability to ~~engage in face-to-face contact~~
26 ~~with healthcare providers for the purpose of fully participating~~ fully
27 participate in the decision-making process.

28 (4) ~~Consideration may be given~~ When identifying the person best
29 qualified to serve as the surrogate for the principal, the supervising
30 healthcare provider may proceed in order of descending preference for service
31 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; ~~or~~

36 (E) Any other adult relative of the principal; or

1 (F) Any other adult person who satisfies the requirements
2 of subdivision (c)(2) of this section.

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

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

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

11 (i) Not directly involved in the principal's health
12 care;

13 (ii) Does not serve in a capacity of decision
14 making, influence, or responsibility over the designated physician; and

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

18 (6)(A) In the event of a challenge to the ~~designation~~
19 identification of the surrogate or the authority of the surrogate to act, it
20 is a rebuttable presumption that the selection of the surrogate was valid.

21 (B) A person who challenges the selection of the surrogate
22 has the burden of proving the invalidity of that selection by a preponderance
23 of the evidence.

24 (d)(1) Except as provided in subdivision (d)(2) of this section:

25 (A) Neither the treating healthcare provider nor an
26 employee of the treating healthcare provider, nor an operator of a healthcare
27 institution, nor an employee of an operator of a healthcare institution may
28 be designated as a surrogate; and

29 (B) A healthcare provider or employee of a healthcare
30 provider may not act as a surrogate if the healthcare provider becomes the
31 principal's treating healthcare provider.

32 (2) An employee of the treating healthcare provider or an
33 employee of an operator of a healthcare institution may be designated as a
34 surrogate if:

35 (A) The employee so designated is a relative of the
36 principal by blood, marriage, or adoption; and

1 (B) The other requirements of this section are satisfied.

2 (e) A healthcare provider may require an individual claiming the right
3 to act as surrogate for a principal to provide a written declaration under
4 penalty of perjury stating facts and circumstances reasonably sufficient to
5 establish the claimed authority.

6

7 20-6-106. Authority of surrogate.

8 (a)(1) A surrogate shall make a healthcare decision in accordance with
9 the principal's individual instructions, if any, and other wishes to the
10 extent known to the surrogate.

11 (2)(A) Otherwise, the surrogate shall make the decision in
12 accordance with the surrogate's determination of the principal's best
13 interest.

14 (B) In determining the principal's best interest, the
15 surrogate shall consider the principal's personal values to the extent known
16 to the surrogate or agent.

17 (b) A surrogate who has not been designated by the principal may make
18 all healthcare decisions for the principal that the principal could make on
19 the principal's own behalf, except that artificial nutrition and hydration
20 may be withheld or withdrawn for a principal upon a decision of the surrogate
21 only if:

22 (1) The action is authorized by the a living will or other
23 written advance directive; or

24 (2) The supervising healthcare provider ~~the designated physician~~
25 and a second independent physician certify in the principal's current
26 clinical records that:

27 ~~(1)(A)~~ (A) The provision or continuation of artificial
28 nutrition or hydration is merely prolonging the act of dying; and

29 ~~(2)(B)~~ (B) The principal is highly unlikely to regain capacity
30 to make medical decisions.

31 ~~(e)~~ A healthcare decision made by a surrogate or agent for a principal
32 is effective without judicial approval.

33

34 20-6-107. Requirement of a guardian to comply with principal's
35 individual instruction.

36 (a) Absent a court order to the contrary, a guardian shall comply with

1 the principal's individual instructions and shall not revoke the principal's
2 advance directive.

3 (b) Except as provided in § 28-65-102, a healthcare decision made by
4 a guardian for the principal is effective without judicial approval.

5
6 20-6-108. Determination of capacity.

7 If a ~~designated~~ licensed physician ~~who~~ makes a determination or is
8 informed of a determination that a principal lacks or has recovered capacity
9 or that another condition exists that affects an individual instruction or
10 the authority of an agent, guardian, or surrogate, the ~~designated~~ licensed
11 physician shall:

12 (1) Record promptly the determination in the principal's current
13 clinical record; and

14 (2) Communicate the determination to the principal, if possible,
15 and to any person authorized to make healthcare decisions for the principal.

16
17 SECTION 2. Arkansas Code § 20-6-118 is repealed.

18 ~~20-6-118. Conflicting laws repealed.~~

19 ~~A law or part of law in conflict with this subchapter is repealed.~~

20
21 SECTION 3. Arkansas Code § 20-13-104 is repealed.

22 ~~20-13-104. Durable power of attorney for health care.~~

23 ~~(a) This section shall be known and may be cited as the "Durable Power~~
24 ~~of Attorney for Health Care Act".~~

25 ~~(b) The General Assembly recognizes the right of the individual to~~
26 ~~control all aspects of his or her personal care and medical treatment.~~
27 ~~However, if the individual becomes incapacitated, his or her right to control~~
28 ~~treatment may be denied unless the individual, as principal, can delegate the~~
29 ~~decision-making power to a trusted agent and be sure that the agent's power~~
30 ~~to make personal and health care decisions for the principal will be~~
31 ~~effective to the same extent as though made by the principal.~~

32 ~~(c)(1) As used in this section, "health care" means any care,~~
33 ~~treatment, service, or procedure to maintain, diagnose, treat, or provide for~~
34 ~~the patient's physical or mental health or personal care.~~

35 ~~(2) "Health care" shall not include decisions concerning life-~~
36 ~~sustaining treatment set forth in the Arkansas Rights of the Terminally Ill~~

1 ~~or Permanently Unconscious Act, § 20-17-201 et seq. However, a power of~~
 2 ~~attorney for health care may contain the declaration set forth in § 20-17-202~~
 3 ~~relating to such life-sustaining treatments.~~

4 ~~(d)(1) A person may execute a power of attorney for health care. The~~
 5 ~~power of attorney may be durable.~~

6 ~~(2) The health care agency shall be:~~

7 ~~(A) In writing;~~

8 ~~(B) Signed by the principal or by someone acting at the~~
 9 ~~direction of the principal and in the principal's presence; and~~

10 ~~(C) Attested to by and subscribed in the presence of two~~
 11 ~~(2) or more competent witnesses who are at least eighteen (18) years of age.~~

12 ~~(3) An agent appointed under a power of attorney for health care~~
 13 ~~shall take precedence over any person listed in § 20-9-602.~~

14 ~~(e) This section does not in any way affect or invalidate any health~~
 15 ~~care agency executed or any act of an agent prior to July 1, 1999, or affect~~
 16 ~~any claim, right, or remedy that accrued prior to July 1, 1999. Nothing~~
 17 ~~contained herein shall be interpreted or construed to alter or amend any~~
 18 ~~provision of the Arkansas Rights of the Terminally Ill or Permanently~~
 19 ~~Unconscious Act, § 20-17-201 et seq. The powers of a health care agent may be~~
 20 ~~combined with a declaration made by a qualified patient under the Arkansas~~
 21 ~~Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et~~
 22 ~~seq.~~

23 ~~(f) This section is wholly independent of the provisions of the~~
 24 ~~Probate Code, § 28-1-101 et seq., relating to wills, trusts, fiduciary~~
 25 ~~relationships, and administration of estates, and nothing in this section~~
 26 ~~shall be construed to affect in any way the provisions of the Probate Code, §~~
 27 ~~28-1-101 et seq.~~

28 ~~(g) Nothing in this section shall be construed as authorizing or~~
 29 ~~encouraging euthanasia, assisted suicide, suicide, or any action or course of~~
 30 ~~action that violates the criminal laws of this state or of the United States.~~

31
 32 SECTION 4. Arkansas Code § 20-17-201(2), concerning the definition of
 33 "declaration", is amended to read as follows:

34 (2)(A) "Declaration" means a writing executed in accordance with
 35 the requirements of § 20-17-202(a)†.

36 (B) "Declaration" is an advance directive under § 20-6-

1 102;

2

3 SECTION 5. Arkansas Code § 20-17-202 is amended to read as follows:

4 20-17-202. Declaration relating to use of life-sustaining treatment.

5 (a)(1) An individual of sound mind and eighteen (18) or more years of
6 age may execute at any time a declaration governing the withholding or
7 withdrawal of life-sustaining treatment. The declaration must be signed by
8 the declarant, or another at the declarant’s direction, and witnessed by two
9 (2) individuals.

10 (2) A declaration executed under this section before July 1,
11 2017, is valid if the declaration substantially complies with subsection (a)
12 of this section.

13 (3) A declaration executed under this section on and after July
14 1, 2017, is valid if the declaration document:

15 (A) Is notarized but does not have two (2) witnesses; or

16 (B) Satisfies the requirements of Arkansas Healthcare
17 Decisions Act, § 20-6-101 et seq.

18 (b) A declaration may be, but need not be, in the following form in
19 the case where the patient has a terminal condition:

20

21 “DECLARATION

22

23 *If I should have an incurable or irreversible condition that will cause my*
24 *death within a relatively short time, and I am no longer able to make*
25 *decisions regarding my medical treatment, I direct my attending physician,*
26 *pursuant to the Arkansas Rights of the Terminally Ill or Permanently*
27 *Unconscious Act, to [withhold or withdraw treatment that only prolongs the*
28 *process of dying and is not necessary to my comfort or to alleviate pain]*
29 *[follow the instructions of whom I appoint as my Health Care*
30 *Proxy to decide whether life-sustaining treatment should be withheld or*
31 *withdrawn]. It is my specific directive that nutrition may be withheld after*
32 *consultation with my attending physician. It is my specific directive that*
33 *hydration may be withheld after consultation with my attending physician. It*
34 *is my specific directive that nutrition may not be withheld. It is my*
35 *specific directive that hydration may not be withheld.*
36 *Signed this day of, 20*

1 Signature.....

2 Address.....

3 ~~The declarant voluntarily signed this writing in my presence. I am a~~
4 competent adult who is not named as a health care proxy in this document. I
5 witnessed the patient's signature on this form.

6 Witness.....

7 Address.....

8 I am a competent adult who is not named as a health care proxy in this
9 document. I am not related to the patient by blood, marriage, or adoption and
10 I would not be entitled to any portion of the patient's estate upon his or
11 her death under any existing will or codicil or by operation of law. I
12 witnessed the patient's signature on this form.

13 Witness.....

14 Address.....”

15 (c) A declaration may be, but need not be, in the following form in
16 the case where the patient is permanently unconscious:

17

18 “DECLARATION

19

20 If I should become permanently unconscious, I direct my attending physician,
21 pursuant to the Arkansas Rights of the Terminally Ill or Permanently
22 Unconscious Act, to [withhold or withdraw life-sustaining treatments that are
23 no longer necessary to my comfort or to alleviate pain] [follow the
24 instructions of whom I appoint as my health care proxy to
25 decide whether life-sustaining treatment should be withheld or withdrawn]. It
26 is my specific directive that nutrition may be withheld after consultation
27 with my attending physician. It is my specific directive that hydration may
28 be withheld after consultation with my attending physician. It is my specific
29 directive that nutrition may not be withheld. It is my specific directive
30 that hydration may not be withheld.

31 Signed this day of, 20

32 Signature.....

33 Address.....

34 ~~The declarant voluntarily signed this writing in my presence. I am a~~
35 competent adult who is not named as a health care proxy in this document. I
36 witnessed the patient's signature on this form.

1 Witness.....

2 Address.....

3 I am a competent adult who is not named as a health care proxy in this
4 document. I am not related to the patient by blood, marriage, or adoption and
5 I would not be entitled to any portion of the patient’s estate upon his or
6 her death under any existing will or codicil or by operation of law. I
7 witnessed the patient’s signature on this form.

8 Witness.....

9 Address.....”

10 (d) A physician or other health care provider who is furnished a copy
11 of the declaration shall make it a part of the declarant’s medical record
12 and, if unwilling to comply with the declaration, promptly so advise the
13 declarant.

14 (e) In the case of a qualified patient, the patient’s health care
15 proxy, in consultation with the attending physician, shall have the authority
16 to make treatment decisions for the patient including the withholding or
17 withdrawal of life-sustaining procedures.

18 (f) A declaration executed by a qualified individual shall be clear
19 and convincing evidence of his or her wishes, but clear and convincing
20 evidence of an individual’s wishes is not limited to the declarations under
21 this section.

22 (g)(1) The directives concerning nutrition and hydration contained in
23 subsections (b) and (c) of this section shall apply only to declarations
24 executed on and after July 16, 2003.

25 (2) All declarations executed before that date shall remain in
26 full force and effect, and the provisions of subsections (b) and (c) of this
27 section pertaining to hydration and nutrition shall not be applied in the
28 interpretation or construction of any such declaration, nor shall they be
29 applied to in any way invalidate any such declaration or to otherwise limit
30 the directives, powers, and authority granted under any such declaration.

31

32 SECTION 6. Arkansas Code § 20-17-207 is amended to read as follows:
33 20-17-207. Transfer of patients – Compliance by health care provider
34 or healthcare institution.

35 ~~An attending physician or other health care provider who is unwilling~~
36 ~~to comply with this subchapter shall as promptly as practicable take all~~

1 ~~reasonable steps to transfer care of the declarant to another physician or~~
2 ~~health care provider.~~

3 (a) A declaration under this subchapter is a written advance directive
4 under the Arkansas Healthcare Decisions Act, § 20-6-101 et seq.

5 (b) The provisions of Arkansas Healthcare Decisions Act, § 20-6-101 et
6 seq., concerning compliance by a health care provider or healthcare
7 institution apply to:

8 (1) Determine whether an attending physician or other health
9 care provider may decline to comply with a declaration executed under this
10 subchapter; and

11 (2) Any duty to transfer a patient when the attending physician
12 or other health care provider declines to comply with a declaration executed
13 under this subchapter.

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15 /s/Irvin
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