

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 H3/1/21

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, Barker, Cavanaugh,*

7 *Cloud, Dalby, Haak, Speaks*

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

9

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For An Act To Be Entitled

11

AN ACT TO CREATE THE NO PATIENT LEFT ALONE ACT;

12

CONCERNING VISITATION RIGHTS OF PATIENTS; TO DECLARE

13

AN EMERGENCY; AND FOR OTHER PURPOSES.

14

15

16

Subtitle

17

TO CREATE THE NO PATIENT LEFT ALONE ACT;

18

CONCERNING VISITATION RIGHTS OF PATIENTS;

19

AND TO DECLARE AN EMERGENCY.

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

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24

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

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Subchapter 4 – No Patient Left Alone Act

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29

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

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1 medical community, including hospitals;

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

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

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

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

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

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

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

25
26 20-6-403. Definitions.

27 As used in this subchapter:

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

32 (i) End-of-life situations;

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

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

1 (iv) Physical support after eating or drinking
2 issues, including weight loss or dehydration; or

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

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

7 (i) Clergy members;

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

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

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

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

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

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

20 (A) A nursing home;

21 (B) A residential care facility;

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

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

26 (E) An assisted living facility; or

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

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

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

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

1 (B) Deafness, being hard of hearing, or other
2 communication barriers;

3 (C) Blindness;

4 (D) Autism spectrum disorder; or

5 (E) Dementia; and

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

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10
11 20-6-404. Visitation and support for a patient with a disability.

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

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

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

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

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

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

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

1 (1) Execute an advance directive or a physician order for life-
2 sustaining treatment as a condition of receiving treatment or visitation; or

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

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

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

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

12
13 20-6-405. Hospital or office of healthcare professional visitation.

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

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

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

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

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

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

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

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

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

2 (2) Due to a court order;

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

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

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

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

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

14 (6) According to visitation policies established under § 20-6-
15 411.

16
17 20-6-406. Hospice facility visitation.

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

22
23 20-6-407. Long-term care facility visitation.

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

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

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

34 (b) A long-term care facility shall work with residents, families,
35 caregivers, resident representatives, and medical providers, and may include
36 the ombudsman program under § 20-10-602 to identify the need for

1 compassionate care visitation, using a person-centered approach that takes
2 the residents requests into account.

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

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

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

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

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

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

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

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

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

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

1 dialysis technicians, laboratory technicians, radiology technicians, and
2 social workers, shall be permitted into the long-term care facility if proper
3 infection control protocols are followed.

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

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

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

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

18
19 20-6-409. Informational materials.

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

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

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

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

28 and

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

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

33 (1) Upon admission or registration; and

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

35 (c) Every sixty (60) days or upon the release of relevant federal
36 guidelines, the Department of Health, with input from the long-term care

1 industry and the hospital industry, shall reevaluate and update the
2 directives where needed to allow for the maximum visitation possible under
3 federal guidelines.

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

8
9 20-6-410. Complaints.

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

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

16
17 20-6-411. Visitation limits or restrictions.

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

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

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

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

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

27
28 20-6-412. Liability of healthcare facilities.

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

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

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

1 (3) Failing to follow the Centers for Disease Control and
2 Prevention or other national guidelines that require or recommend restricting
3 visitor access; or

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

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

7
8 20-6-413. Construction.

9 (a) This subchapter does not apply to:

10 (1) The Arkansas State Hospital;

11 (2) A minor who is:

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

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

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

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

22 (b) This subchapter does not:

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

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

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

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

32 (1) A healthcare facility;

33 (2) The Department of Health;

34 (3) The State Board of Health;

35 (4) The Department of Human Services; or

36 (5) The Governor upon declaring a disaster emergency under the

1 Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., or ordering the
2 board to take action under § 20-7-110, or both.

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

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

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

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

29
30 /s/J. Mayberry
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