

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

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

HOUSE BILL 1533

By: Representatives D. Ferguson, Broadway

By: Senator Irvin

## For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT ACT; TO PROVIDE FOR THE USE OF A PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT FORM; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE ARKANSAS PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT ACT; AND TO PROVIDE FOR THE USE OF A PHYSICIAN ORDER FOR LIFE-SUSTAINING TREATMENT FORM.

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

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

Subchapter 2 – Arkansas Physician Order for Life-Sustaining Treatment Act

20-6-201. Title.

This subchapter shall be known and may be cited as the “Arkansas Physician Order for Life-Sustaining Treatment Act”.

20-6-202. Legislative findings.

The General Assembly finds that:

(1) The state has statutorily recognized the right of an adult with decision-making capacity to plan ahead for healthcare decisions through the execution of advance directives and other healthcare decision documents



and the designation of decision makers to ensure that the right to control decisions about a person's own health care is not lost if the patient loses his or her decisions-making capacity and is no longer able to participate actively in making healthcare decisions;

(2) The physician order for life-sustaining treatment form complements an advance directive by converting a person's wishes regarding life-sustaining treatment into a medical order;

(3) The physician order for life-sustaining treatment form contains signed, immediately actionable medical orders on a standardized colored form that is recognized and honored across various healthcare settings;

(4) Completing a physician order for life-sustaining treatment form encourages communication and conversations between the patient and healthcare professionals; and

(5) A physician order for life-sustaining treatment form can be quickly understood by all healthcare professionals, including emergency care providers.

#### 20-6-203. Definitions.

As used in this subchapter:

(1) "Advance directive" means the same as defined in § 20-6-102;

(2) "Authorized person" means a person who may consent or revoke a healthcare decision on the patient's behalf, including:

(A) A person authorized by law to consent on behalf of the patient when the patient is incapable of making an informed decision; or

(B) In the case of a minor child, the parent or parents having custody of the child, the child's legal guardian, or another person as otherwise provided by law;

(3) "Decision-making capacity" means a patient's ability to understand and appreciate the nature and consequences of a particular healthcare decision, including the benefits and risks of the decision and alternatives to any proposed healthcare decision, and to reach an informed decision;

(4) "Emergency care" means the use of resuscitative measures and other immediate treatment provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, impairment, or death;

(5) "Emergency care provider" means an emergency medical technician, paramedic, or member of a first aid, ambulance, or rescue squad;

(6) "Healthcare decision" means the same as defined in § 20-6-102;

(7) "Healthcare institution" means the same as defined in § 20-6-102;

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

(9) "Life-sustaining treatment" means the use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery, or therapy that uses mechanical or other artificial means to sustain, restore, or supplant a vital bodily function and increase the expected life span of a patient;

(10) "Physician order for life-sustaining treatment" means a standardized printed document that:

(A) Is uniquely identifiable;

(B) Has a uniform color;

(C) Records the healthcare wishes of the patient; and

(D) Directs a healthcare professional regarding emergency care and life-sustaining treatment; and

(11) "Resuscitative measures" means cardiopulmonary resuscitation provided if a patient suffers a cardiac or respiratory arrest.

20-6-204. Physician order for life-sustaining treatment form.

The State Board of Health shall prescribe a standardized physician order for life-sustaining treatment form that:

(1) Is uniquely identifiable;

(2) Has a uniform color;

(3) Indicates whether the patient has made an anatomical gift;

(4) Provides direction to healthcare professionals and emergency care providers regarding the use of emergency care and life-sustaining treatment by indicating the patient's preference;

(5) Is intended to be honored by all healthcare professionals and emergency care providers who treat the patient across the full range of possible healthcare settings, including without limitation the patient's

residence, a healthcare institution, or the scene of a medical emergency; and

(6) Includes other features and information as the board may determine advisable.

20-6-205. Recommended usage for certain medical circumstances.

The physician shall complete the physician order for life-sustaining treatment form based on the preferences and medical indications of the patient if:

(1) The patient is diagnosed or has been diagnosed with a terminal condition;

(2) The physician determines, for any reason, that the patient has a life expectancy of less than one (1) year; or

(3) The patient requests a physician order for life-sustaining treatment form.

20-6-206. Validity.

(a) A physician order for life-sustaining treatment form shall be valid and completed if the physician order for life-sustaining treatment form:

(1) Contains information indicating the patient's healthcare preferences;

(2) Has been voluntarily signed by the patient or authorized person; and

(3) Includes the signature of the patient's attending physician and the date of signature.

(b) A physician order for life-sustaining treatment form shall be presumed by a healthcare professional to be valid unless the healthcare professional has knowledge to the contrary.

20-6-207. Healthcare professional responsibility.

(a) Subject to subsections (b) and (c) of this section, a healthcare professional shall comply with a valid physician order for life-sustaining treatment form of which the healthcare professional has actual knowledge, regardless of whether the healthcare professional is employed by a healthcare institution or other entity.

(b) A healthcare professional who is unwilling or unable to comply

with a physician order for life-sustaining treatment form shall take all reasonable measures to transfer the patient to another healthcare institution or healthcare professional.

(c) Emergency care and life-sustaining treatment shall not be withheld or withdrawn pursuant to a physician order for life-sustaining treatment form if the patient is pregnant and it is probable that the fetus will develop to the point of live birth with the continued application of life-sustaining treatment.

20-6-208. Revocation.

(a) A physician order for life-sustaining treatment form may be revoked at any time and in any manner by:

(1) The patient, without regard to his or her age or physical condition, who executed the physician order for life-sustaining treatment form; or

(2) The authorized person.

(b) The revocation of the physician order for life-sustaining treatment form shall be effective upon communication to the healthcare professional by the patient, by an authorized person, or by a witness to the communication.

(c) The healthcare professional shall document or cause to be documented in the medical record of the patient that the physician order for life-sustaining treatment form has been revoked.

20-6-209. Disagreement over decision-making capacity or interpretation or application of physician order for life-sustaining treatment.

In the event of a disagreement among the patient, the attending physician, and the authorized person concerning the decision-making capacity or the appropriate interpretation or application of the physician order for life-sustaining treatment, the parties may seek to resolve the disagreement by procedures and practices established by the healthcare institution, including without limitation consultation with the healthcare institution's ethics committee or a person designated by the healthcare institution for the purpose of dispute resolution.

20-6-210. Conflicts with other healthcare decision documents.

(a) If a valid physician order for life-sustaining treatment form sets forth a declaration, direction, or order preference that conflicts with a declaration, direction, or order preference set forth in one (1) or more other types of healthcare decision documents:

(1) The declaration, direction, or order preference in the document executed most recently is valid; and

(2) Any other declaration, direction, or order preference that does not conflict with another declaration, direction, or order preference set forth in another document remains valid.

(b) If a valid physician order for life-sustaining treatment form contains a preference to provide life-sustaining treatment to a patient who also possesses a do-not-resuscitate identification, the healthcare professional shall not provide life-resuscitating treatment if the do-not-resuscitate identification is in the immediate possession of the patient when the need for resuscitative measures arises.

20-6-211. Immunity from liability.

A healthcare professional is not guilty of unprofessional conduct or subject to civil or criminal liability if:

(1) The healthcare professional withholds emergency care or life-sustaining treatment in compliance with a physician order for life-sustaining treatment form;

(2) The healthcare professional violates the physician order for life-sustaining treatment form by acting in accordance with a declaration, direction, or order preference set forth in one (1) or more advance directives or other type of healthcare decision document and is reasonably and in good faith unaware of the existence of the physician order for life-sustaining treatment form or, reasonably and in good faith, believes that the physician order for life-sustaining treatment form has been revoked; or

(3) The healthcare professional provides emergency care or life-sustaining treatment:

(A) When the patient or authorized person has made an oral or written request for emergency care or life-sustaining treatment; or

(B) When the patient or authorized person indicates a desire to revoke the physician order for life-sustaining treatment form.

20-6-212. Violations.(a) It is unlawful for a person to:

(1) Willfully conceal, cancel, deface, or obliterate a physician order for life-sustaining treatment form without the consent of the patient or authorized person;

(2) Falsify or forge the physician order for life-sustaining treatment form of another person;

(3) Willfully conceal or withhold personal knowledge of the revocation of a physician order for life-sustaining treatment form of another person with the intent to cause the withholding or withdrawal of emergency care or life-sustaining treatment contrary to the wishes of the patient or the authorized person;

(4) Require or prohibit the execution of a physician order for life-sustaining treatment form as a condition of receiving health insurance or healthcare services;

(5) Coerce or fraudulently induce another person to execute a physician order for life-sustaining treatment form; or

(6) Willfully refuse to honor a physician order for life-sustaining treatment form and willfully refuse to transfer the patient to another healthcare institution or healthcare professional.

(b) A person who violates this subchapter is guilty of a Class C misdemeanor.

20-6-213. Reciprocity.

A physician order for life-sustaining treatment executed under the laws of another state shall be honored and held as valid under this subchapter.

20-6-214. Application.

(a) A death that results from withholding of emergency care or life-sustaining treatment according to a physician order for life-sustaining treatment form does not constitute a physician-assisted suicide under § 5-10-106 or homicide under Arkansas Code Title 5, Chapter 10.

(b)(1) The execution of a physician order for life-sustaining treatment form does not affect the sale, procurement, or issuance of a life insurance policy or annuity policy.

(2) A life insurance policy or annuity policy shall not be

impaired or invalidated if emergency care or life-sustaining treatment is withheld from an insured individual who has executed a physician order for life-sustaining treatment form.

(c) This subchapter does not:

(1) Require a healthcare professional to take any action contrary to reasonable medical standards;

(2) Affect the responsibility of a healthcare professional to provide treatment for a patient's comfort or alleviation of pain; or

(3) Condone, authorize, or approve mercy killing, euthanasia, or physician-assisted suicide.