

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1951

By: Representative M. Gray

## For An Act To Be Entitled

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

### Subtitle

TO AMEND THE ARKANSAS HEALTHCARE  
DECISIONS ACT.

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

SECTION 1. Arkansas Code § 9-20-120(b)(2), concerning duties and responsibilities of custodians under the Adult Maltreatment Custody Act, is amended to read as follows:

(2) Consent to withholding life-saving treatment, unless the consent is provided consistent with and in accordance with an advance directive;

SECTION 2. Arkansas Code § 20-6-105(c)(4) and (5), concerning the designation of a surrogate under the Arkansas Healthcare Decisions Act, are amended to read as follows:

(4) When identifying the person best qualified to serve as the surrogate for the principal, the supervising healthcare provider may proceed in order of descending preference for service as a surrogate to:

- (A) The principal's spouse, unless legally separated;
- (B) The principal's adult child;
- (C) The principal's parent;
- (D) The principal's adult sibling;
- (E) Any other adult relative of the principal; ~~or~~



(F) A representative of the Adult Protective Services Unit of the Department of Human Services; or

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

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

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

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

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

(ii) Does not serve in a capacity of decision making, influence, or responsibility over the designated ~~physician~~ supervising healthcare provider; and

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

SECTION 3. Arkansas Code § 20-6-107(a), concerning the requirement of a guardian to comply with principal's individual instruction, is amended to read as follows:

(a) Absent a court order to the contrary, a guardian, surrogate, or supervising healthcare provider shall comply with the principal's individual instructions and shall not revoke the principal's advance directive.

SECTION 4. Arkansas Code § 20-6-109(a)(2), concerning compliance by a healthcare provider or institution, is amended to read as follows:

(2)(A) A healthcare decision for the principal made by a person authorized to make healthcare decisions for the principal to the same extent as if the decision had been made by the principal while having capacity if the healthcare decision is not contrary to the principal's advance directive.

(B) However, an individual authorized to make healthcare decisions for a principal may make a healthcare decision that is contrary to

a written advance directive if:

(i) The individual acts in good faith and provides evidence that the principal expressed a contrary intention after the execution of the advance directive; or

(ii) Circumstances have materially changed that a deviation from the express terms of an advance directive is consistent with current medical best practices and advisable for the health and welfare of the patient.

SECTION 5. Arkansas Code § 20-6-111(b), concerning the liability under the Arkansas Healthcare Decisions Act, is amended to read as follows:

(b) ~~As~~ A supervising healthcare provider, an ethics board member, or an individual acting as an agent or a surrogate under this subchapter is not subject to civil or criminal liability or to discipline for unprofessional conduct for healthcare decisions made in good faith.

SECTION 6. Arkansas Code § 20-6-112(b), concerning the presumption of capacity under the Arkansas Healthcare Decisions Act, is amended to read as follows:

(b) ~~As~~ Unless an individual has been determined to lack capacity under § 20-6-108 or other applicable law, an individual is presumed to have capacity to make a healthcare decision, to give or revoke an advance directive, and to designate or disqualify a surrogate.

SECTION 7. Arkansas Code § 20-6-115(b), concerning court jurisdiction under the Arkansas Healthcare Decisions Act, is amended to read as follows:

(b)(1) A proceeding under this section shall be expedited on the court's civil dockets and shall be addressed by the court within two (2) business days.

(2) If the court does not act within two (2) business days, the petition for relief shall be deemed granted.

SECTION 8. Arkansas Code § 28-65-211(b)(1), concerning determination of incapacity and evidentiary requirements, is amended to read as follows:

(b)(1)(A) In determining the incapacity of a person for whom a guardian is sought to be appointed for cause other than minority,

disappearance, or detention, or confinement by a foreign power, the court shall require that the evidence of incapacity ~~include the oral testimony or~~ be in the form of a sworn written statement of one (1) or more qualified professionals, whose qualifications shall be set forth in their ~~testimony or~~ written statements.

(B) The qualified professional may make a statement of incapacity through oral testimony.