

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

State of Arkansas
93rd General Assembly
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As Engrossed: H4/12/21
A Bill

SENATE BILL 296

By: Senator G. Stubblefield
By: Representative Eubanks

For An Act To Be Entitled

AN ACT TO PROHIBIT VIDEOTAPING OR SHARING PHOTOGRAPHS
OR VIDEO OF RESIDENTS OF LONG-TERM CARE FACILITIES
WITHOUT THEIR CONSENT TO THE INTERNET; AND FOR OTHER
PURPOSES.

Subtitle

TO PROHIBIT VIDEOTAPING OR SHARING
PHOTOGRAPHS OR VIDEO OF RESIDENTS OF
LONG-TERM CARE FACILITIES WITHOUT THEIR
CONSENT TO THE INTERNET.

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

SECTION 1. Arkansas Code § 20-10-104 is amended to read as follows:
20-10-104. Photographing prohibited – Exceptions.

(a)(1) Except as provided in subsection (d) or subsection (e) of this section, a resident of a long-term care facility in this state shall not be photographed or videotaped without obtaining prior written consent from the resident or, in cases of incapacity, from the guardian or legal representative of the resident.

(2) Photographs, video, or other information identifying a resident of a long-term care facility shall not be shared on a social media site or account without consent required under subdivision (a)(1) of this section.

(b)(1) When an employee or agent of a long-term care facility photographs, videotapes, or shares photographs, video, or other information



identifying a resident on a social media site or account of a resident under conditions in which consent is required, the evidence of the consent shall be maintained in the file of the resident at the long-term care facility.

(2) The consent described in subdivision (b)(1) of this section shall be continuously effective unless the consent is rescinded in writing by the resident or the guardian or legal representative of the resident.

(c) Failure to obtain consent before photographing, videotaping, or sharing photographs, video, or other information identifying a resident on a social media site or account of a resident in a long-term care facility shall be a Class B misdemeanor.

(d) This section does not prevent:

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

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

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

(4) The taking of a photograph or video by security cameras or other devices for the safety or security of residents; or

(5) The taking of a photograph or video by an individual to document abuse or neglect of a resident and provided to a government authority with the power to investigate abuse or neglect including without limitation, the Department of Human Services, the Office of Medicaid Inspector General, the United States Department of Health and Human Services, a law enforcement agency, a prosecuting attorney, or the office of the Attorney General.

(e)(1) The photographing or videotaping of residents is permitted without written consent from the resident or the guardian or legal representative of the resident when the photographing is in connection with a survey or investigation made by the Department of Human Services, the Office of the Attorney General, or the United States Department of Health and Human Services, or any agent of the listed entities while in the course of:

(A) Licensure inspections;

(B) Medicaid certification;

(C) A complaint investigation; or

(D) An investigation of allegations of abuse or neglect of residents or misappropriation of residents' property.

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

(f) The photographing or videotaping of another resident that occurs unintentionally while photographing or videotaping a resident for whom consent has been obtained does not constitute a Class B misdemeanor.

/s/G. Stubblefield