

State of Arkansas
95th General Assembly
Regular Session, 2025

A Bill

SENATE BILL 178

By: Senator J. Boyd
By: Representative Rose

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS HEALTHCARE DECISIONS ACT; TO CLARIFY THE ABILITY OF A SURROGATE TO OBTAIN RECORDS ON A PRINCIPAL'S INCOME, ASSETS, AND BANKING AND FINANCIAL RECORDS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS HEALTHCARE DECISIONS ACT; AND TO CLARIFY THE ABILITY OF A SURROGATE TO OBTAIN RECORDS ON A PRINCIPAL'S INCOME, ASSETS, AND BANKING AND FINANCIAL RECORDS.

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

SECTION 1. Arkansas Code § 20-6-106(d), concerning the authority of a surrogate under the Arkansas Healthcare Decisions Act, is amended to read as follows:

(d)(1) A surrogate may apply for public benefits, such as Medicare and Medicaid, for the principal, subject to any federal restrictions or requirements, and ~~have access to information to the extent required to make an application, may obtain records~~ regarding the principal's income, assets, and banking and financial records ~~to the extent required to make an application on an account of which the principal is:~~

(A) The owner or co-owner; or

(B) A beneficiary, including without limitation a trust, guardianship, or conservatorship.

(2) The authority under subdivision (d)(1) of this section



includes without limitation the ability to assist with, submit, and execute applications for benefits, redetermination of eligibility, and other ongoing related communications.

(3) The authority under subdivision (d)(1) of this section shall terminate when revoked by a principal who no longer lacks decisional capacity, upon appointment or availability of a power of attorney or guardian with such authority, or upon the death of the principal.

(4)(A) The authority under subdivision (d)(1) of this section shall be granted to a surrogate from a principal in writing or recorded orally shall only be exercised by the surrogate upon presentation of written designation signed by the principal or supervising healthcare provider as provided in § 20-6-105(c) that is either notarized or signed by two (2) non-familial witnesses.

(B) The written designation shall:

(i) Identify the principal;
(ii) Identify the designated surrogate;
(iii) State the date of the designation of the surrogate by the principal or by the supervising healthcare provider; and
(iv) If appointed by a supervising healthcare provider:

(a) Attest that the principal has been determined by a licensed physician to lack capacity and an agent or guardian has not been appointed or the agent or guardian is not reasonably available; and

(b) State that the written document is executed in conformance with this section for the purpose of allowing the surrogate to apply for public benefits on behalf of the principal.

(5) The authority under subdivision (d)(1) of this section to access records regarding the principal's income and assets, including bank account and financial records, does not confer the authority to control, direct, or otherwise access the principal's income, assets, or accounts upon the surrogate.

(6)(A) A person or entity to whom a written designation is presented as described in subdivision (d)(4) of this section may rely on the written designation if the written designation appears on its face to comply with this section.

(B) If the written designation does not appear on its face to comply with this section or if the recipient has reasonable cause to suspect the written designation does not comply with this section, the recipient may decline to provide the requested record.

(C) A person or entity that provides information or records, or both, to a surrogate under this section is not liable to the principal, surrogate, or other person or entity for providing the information or records, or both.

(7)(A) If bank account or financial records are sought for an account co-owned by the principal and another person or entity or an account of which the principal is a beneficiary, the bank or financial institution shall give written notice to the joint account holder or the signatory on the entity account of the request and allow them an opportunity to object in writing to the request within ten (10) business days.

(B) If the bank or financial institution does not receive a written objection within ten (10) business days of the date on the notice described in subdivision (d)(7)(A) of this section, the bank or financial institution may allow the surrogate to obtain the records if the request is otherwise in accordance with the requirements of this subchapter.

(C) If the bank or financial institution receives a written objection within ten (10) business days of the date of the notice described in subdivision (d)(7)(A) of this section, the bank or financial institution shall notify the surrogate of the objection and decline the request for records.

(8) Except as provided in subdivision (d)(7) of this section, the surrogate may receive only records which the principal would be entitled upon request to receive when making a request for records.

(9)(A) The records, materials, data, and information made available by a financial services provider are confidential and shall not be disclosed to any person other than as necessary to apply for public benefits on behalf of the principal.

(B) The surrogate shall securely destroy all copies of the information upon termination of the authority under subdivision (d)(3) of this section.

(C) Upon request, all information and records obtained by a surrogate under subdivision (d)(1) of this section shall be promptly and

securely transferred to a properly appointed successor surrogate, power of attorney, or guardian or to a principal who no longer lacks decisional capacity.

SECTION 2. Arkansas Code § 20-6-111, concerning liability for a healthcare provider or healthcare institution under the Arkansas Healthcare Decisions Act, is amended to add an additional subsection to read as follows:

(d) A person or entity that relies in good faith on a written surrogacy designation under this subchapter is not subject to civil or criminal liability, including any administrative proceeding, for providing the surrogate with access to records regarding the principal's income, assets, and banking and financial accounts for the surrogate to make an application for public benefits on behalf of the principal.