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Act 311 of the Regular Session

State of Arkansas

As Engrossed: H1/19/21 H2/1/21 H2/24/21 H3/1/21

93rd General Assembly

A Bill

Regular Session, 2021

HOUSE BILL 1061

By: Representatives J. Mayberry, Lundstrum, Crawford, Vaught, Bentley, Evans, Furman, Maddox, M. McElroy, Miller, Richmond, Watson, *Brown, McKenzie, Gazaway, Payton, Penzo, Barker, Cavenaugh, Cloud, Dalby, Haak, Speaks*

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

For An Act To Be Entitled

AN ACT TO CREATE THE NO PATIENT LEFT ALONE ACT; CONCERNING VISITATION RIGHTS OF PATIENTS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE NO PATIENT LEFT ALONE ACT; CONCERNING VISITATION RIGHTS OF PATIENTS; AND TO DECLARE AN EMERGENCY.

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 4 — No Patient Left Alone Act

20-6-401. Title.

This subchapter shall be known and may be cited as the "No Patient Left Alone Act".

20-6-402. Legislative findings.

The General Assembly finds that:

(1) The coronavirus 2019 (COVID-19) pandemic has caused great uncertainty and anxiety across the state and has significantly affected the medical community, including hospitals;

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

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

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

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

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

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

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

20-6-403. Definitions.

As used in this subchapter:

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

(i) End-of-life situations;

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

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

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

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

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

(i) Clergy members;

(ii) Lay persons offering religious or spiritual support;

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

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

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

(3) "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;

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

(A) A nursing home;

(B) A residential care facility;

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

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

(E) An assisted living facility; or

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

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

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

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

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

(C) Blindness;

(D) Autism spectrum disorder; or

(E) Dementia; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Due to a court order;

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

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

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

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

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

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

20-6-406. Hospice facility visitation.

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

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

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

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

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

(b) A long-term care facility shall work with residents, families, caregivers, resident representatives, and medical providers, and may include the ombudsman program under § 20-10-602 to identify the need for compassionate care visitation, using a person-centered approach that takes the residents requests into account.

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

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

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

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

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

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

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

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

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

(e) Healthcare workers who are not employees of the long-term care facility but provide direct care to a resident in the long-term care facility, such as hospice workers, emergency medical services personnel, dialysis technicians, laboratory technicians, radiology technicians, and social workers, shall be permitted into the long-term care facility if proper infection control protocols are followed.

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

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

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

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

20-6-409. Informational materials.

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

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

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

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

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

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

(1) Upon admission or registration; and

(2) On the website of the healthcare facility.

(c) Every sixty (60) days or upon the release of relevant federal guidelines, the Department of Health, with input from the long-term care industry and the hospital industry, shall reevaluate and update the directives where needed to allow for the maximum visitation possible under federal guidelines.

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

20-6-410. Complaints.

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

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

20-6-411. Visitation limits or restrictions.

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

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

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

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

(4) Visitors are noncompliant with healthcare facility policy.

20-6-412. Liability of healthcare facilities.

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

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

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

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

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

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

20-6-413. Construction.

(a) This subchapter does not apply to:

(1) The Arkansas State Hospital;

(2) A minor who is:

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

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

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

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

(b) This subchapter does not:

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

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

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

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

(1) A healthcare facility;

(2) The Department of Health;

(3) The State Board of Health;

(4) The Department of Human Services; or

(5) The Governor upon declaring a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., or ordering the board to take action under § 20-7-110, or both.

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

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

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

bill; or

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

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