

Act 1536 (Formerly SB 527) APPROVED: 4/15/1999

Sponsored by: Senator Bradford

For An Act To Be Entitled "AN ACT TO CORRECT TECHNICAL ERRORS AND OMISSIONS IN CERTAIN EXISTING PROCEDURAL STATUTES; AND FOR OTHER PURPOSES."

Subtitle: "TO CORRECT TECHNICAL ERRORS AND OMISSIONS IN CERTAIN EXISTING PROCEDURAL STATUTES."

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

SECTION 1. Arkansas Code 20-17-201(7), regarding the Definitions for the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, is amended to read as follows:

"(7) ~~Qualified patient~~ means a patient eighteen (18) or more years of age who has executed a declaration or appointed a health care proxy and who has been determined by the attending physician to be in a terminal condition or in a permanently unconscious state by the attending physician and another qualified physician who has examined the patient;"

SECTION 2. Arkansas Code 20-17-202(e), regarding Declarations relating to the use of life-sustaining treatment under the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act is amended to read as follows:

"(e) In the case of a qualified patient, the patient's health care proxy, in consultation with the attending physician, shall have the authority to make treatment decisions for the patient including the withholding or withdrawal of life-sustaining procedures

SECTION 3. Arkansas Code 20-17-203, regarding when a declaration becomes operative under the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, is amended to read as follows:

"20-17-203. When declaration operative. A declaration becomes operative when

- (i) it is communicated to the attending physician and
- (ii) the declarant is determined by the attending physician and another physician in consultation either to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment or to be permanently unconscious. When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer provisions of § 20-17-207."

SECTION 4. Arkansas Code 20-17-205, regarding Recording a determination of terminal condition and declaration under the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, is amended to read as follows:

"20-17-205. Recording determination of terminal condition or permanent unconsciousness and declaration. Upon determining that the declarant is in a terminal condition or permanently unconscious, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record."

SECTION 5. Arkansas Code 20-17-209(b), regarding Penalties under the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, is amended to read as follows:

"(b) A physician who willfully fails to record the determination of terminal condition or permanent unconsciousness in accordance with § 20-17-205 is guilty of a Class A misdemeanor."

SECTION 6. Arkansas Code 20-17-210(d), regarding Miscellaneous provisions under the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, is amended to read as follows:

"(d) This subchapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition or permanent unconsciousness."

SECTION 7. Arkansas Code 28-65-302, regarding certain decisions of a guardian which require court approval is amended to read as follows: "28-65-302. Decisions requiring court approval.

(a) No guardian shall make any of the following decisions without filing a petition and receiving express court approval:

1. Consent on behalf of the incapacitated person to abortion, sterilization, psychosurgery, or removal of bodily organs except when necessary in a situation threatening the life of the incapacitated;
2. Consent to withholding life-saving treatment;
3. Authorize experimental medical procedures;
4. Authorize termination of parental rights;
5. Prohibit the incapacitated person from voting;
6. Prohibit the incapacitated person from obtaining a driver's license;
7. Consent to a settlement or compromise of any claim by or against the incapacitated person or his estate.

(b) Provided however, the provisions of subdivision (2) above shall not apply to written requests under § 20-17-214."

SECTION 8. Arkansas Code 16-46-105, regarding confidentiality of peer review proceedings, is amended to read as follows: "16-46-105. Records of, and testimony before, committees reviewing and evaluating quality of medical or hospital care.

(a)(1) The proceedings, minutes, records, or reports of organized committees of hospital medical staffs or medical review committees of local medical societies having the responsibility for reviewing and evaluating the quality of medical or hospital care, and any records, other than those records described in subsection (c) of this section, compiled or accumulated by the administrative staff of such hospitals in connection with such review or evaluation, together with all communications or reports originating in such committees, shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or § 25-19-101 et seq. or admissible in any legal proceeding and shall be absolutely privileged communications. The submission of such proceedings, minutes, records, reports and communications to a hospital governing board shall not operate as a waiver of the privilege.

(2) Neither shall testimony as to events occurring during the activities of such committees be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or § 25-19-101 et seq. or admissible.

(b) Nothing in this section shall be construed to prevent disclosure of the data mentioned in subsection (a) of this section to appropriate state or federal regulatory agencies which by statute or regulation are entitled to access to such data, nor to organized committees of hospital medical staffs or governing boards where the medical practitioner seeks membership or clinical privileges. Further, nothing in this section shall be construed to prevent discovery and admissibility if the legal action in which such data is sought is brought by a medical practitioner who has been subjected to censure or disciplinary action by such agency or committee or by a hospital medical staff or governing board.

(c) Nothing in this section or § 20-9-308 shall be construed to apply to original hospital medical records, incident reports, or other records kept with respect to the care or treatment of any patient in the course of business of operating a hospital or to affect the discoverability or admissibility of such records."

SECTION 9. Arkansas Code § 20-9-501, regarding definitions of entities to which peer review confidentiality applies, is amended to read as follows: "20-9-501. Definitions. As used in this subchapter, unless the context otherwise requires, the term ~~peer review committee~~ or ~~committee~~ shall mean a committee of a hospital medical staff or a committee of a state or local professional association which is formed to evaluate and improve the quality of health care rendered by providers of health services or to determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable by the providers of professional health services in the area."

SECTION 10. Arkansas Code 20-9-503, regarding confidentiality of peer review proceedings and records, is amended by adding a new subsection (c) follows: "20-9-503. Proceeding and records confidential - Exception.

(a) The proceedings and records of a peer review committee, as defined in § 20-9-501, shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are subject to evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members thereof.

(b) However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such action merely because they were presented during the proceedings of the committee; nor shall any person who testifies before the committee or who is a member of the committee be prevented from testifying as to matters within his knowledge, but the witness shall not be asked about his testimony before the committee or about opinions formed by him as a result of the committee hearings.

(c) The submission of such peer review proceedings, minutes, records, reports and communications to a hospital governing board shall not operate as a waiver of the privilege."

SECTION 11. Arkansas Code 20-15-905, the HIV Shield Law, is amended to read as follows: "20-15-905. HIV Shield Law.

(a) As used in this section:

1. ~~H~~Health care provider~~q~~means any physician, nurse, paramedic, or other person providing medical, nursing, or other health care services of any kind;
2. ~~H~~Health facility~~q~~means a hospital, nursing home, blood bank, blood center, sperm bank, or other health care institution;
3. ~~H~~I~~V~~qmeans the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome (AIDS);
4. ~~P~~erson~~q~~includes any natural person, partnership, association, joint venture, trust, governmental entity, public or private corporation, health facility, or other legal entity;
5. ~~T~~est~~q~~or ~~H~~I~~V~~ test~~q~~means a test to determine the presence of the antibody or antigen to HIV, or of HIV infection.

(b) Informed consent Consent is not required for a health care provider or health facility to perform a test when a health care provider or employee of a health facility is involved in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment. The results of the test shall be provided by the person ordering the test to the affected health care provider or employee of a health facility, to the health care provider's or employee's physician, to the patient individual tested, and to the patient's individual~~q~~ physician. Appropriate counseling along with the test results shall be provided.

(c) Informed consent, information, and counseling are not required for the performance of an HIV test when, in the judgment of the physician, such testing is medically indicated to provide appropriate diagnosis and treatment to the subject of the test, provided that the subject of the test has otherwise provided his or her consent to such physician for medical treatment. If confirmatory testing is positive for evidence of HIV infection, the patient shall be informed.

(d) Health care providers or facilities may not deny appropriate care based upon the results of an HIV test.

(e) (1) Nothing in this section shall be construed to impose civil liability or criminal sanction for performing a test without written informed consent pursuant to the provisions of subsection (b) or (c) of this section. Notwithstanding any other law to the contrary, no person who performs a test pursuant to subsections (b) or (c) of this section shall be subject to civil or criminal liability for doing so.

(2) Nothing in this section shall be construed to impose civil liability or criminal sanction for disclosure of a test result in accordance with the provisions of subsection (b) of this section; Notwithstanding any other

law to the contrary, no person who discloses a test result in accordance with the provisions of subsection (b) of this section shall be subject to civil or criminal liability; provided, however, that nothing in this section shall be construed to limit the confidentiality for AIDS testing provided by §20-15-901 or other provision of law for AIDS testing unless testing is conducted pursuant to this section."

SECTION 12. Arkansas Code, Title 20, Chapter 9, Subchapter 3 is amended by adding a new section at the end thereof to be appropriately numbered by the Arkansas Code Revision Commission: "No liability for furnishing medical records pursuant to subpoena. Notwithstanding any other law to the contrary, no person or medical facility serving as custodian of health or medical records shall be subject to any civil or criminal liability for providing access to, or producing copies of, such records pursuant to a subpoena issued by any board, agency, commission, prosecuting attorney or grand jury."

SECTION 13. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.