

1 State of Arkansas  
2 95th General Assembly  
3 Regular Session, 2025  
4

# A Bill

SENATE BILL 178

5 By: Senator J. Boyd  
6 By: Representative Rose  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS HEALTHCARE DECISIONS  
10 ACT; TO CLARIFY THE ABILITY OF A SURROGATE TO OBTAIN  
11 RECORDS ON A PRINCIPAL’S INCOME, ASSETS, AND BANKING  
12 AND FINANCIAL RECORDS; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO AMEND THE ARKANSAS HEALTHCARE  
16 DECISIONS ACT; AND TO CLARIFY THE  
17 ABILITY OF A SURROGATE TO OBTAIN RECORDS  
18 ON A PRINCIPAL’S INCOME, ASSETS, AND  
19 BANKING AND FINANCIAL RECORDS.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 20-6-106(d), concerning the authority of a  
25 surrogate under the Arkansas Healthcare Decisions Act, is amended to read as  
26 follows:

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

33 (A) The owner or co-owner; or

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

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



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

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

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

14 (B) The written designation shall:

15 (i) Identify the principal;

16 (ii) Identify the designated surrogate;

17 (iii) State the date of the designation of the  
 18 surrogate by the principal or by the supervising healthcare provider; and

19 (iv) If appointed by a supervising healthcare  
 20 provider:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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