

1-1 By: Hughes, et al. S.B. No. 917
 1-2 (In the Senate - Filed March 2, 2021; March 11, 2021, read
 1-3 first time and referred to Committee on Health & Human Services;
 1-4 May 13, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 4; May 13, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13		X		
1-14	X			
1-15		X		
1-16		X		
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 917 By: Perry

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to advance directives or health care or treatment
 1-22 decisions made by or on behalf of patients.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. This Act may be cited as the Respecting Texas
 1-25 Patients' Right to Life Act of 2021.

1-26 SECTION 2. The purpose of this Act is to protect the right
 1-27 of patients and their families to decide whether and under what
 1-28 circumstances to choose or reject life-sustaining treatment. This
 1-29 Act amends the applicable provisions of the Advance Directives Act
 1-30 (Chapter 166, Health and Safety Code) to ensure that, when an
 1-31 attending physician is unwilling to respect a patient's advance
 1-32 directive or a patient's or family's decision to choose the
 1-33 treatment necessary to prevent the patient's death,
 1-34 life-sustaining medical treatment will be provided for 90 days
 1-35 after an ethics or medical committee's review so that the patient
 1-36 can be transferred to a health care provider willing to honor the
 1-37 directive or treatment decision.

1-38 SECTION 3. Section 166.045(c), Health and Safety Code, is
 1-39 amended to read as follows:

1-40 (c) If an attending physician refuses to comply with a
 1-41 directive or treatment decision to provide life-sustaining
 1-42 treatment to a patient [and does not wish to follow the procedure
 1-43 established under Section 166.046], life-sustaining treatment
 1-44 shall be provided to the patient for 90 days under the procedures
 1-45 prescribed by Section 166.046 so that [, but only until a reasonable
 1-46 opportunity has been afforded for the transfer of] the patient can
 1-47 be transferred to another physician or health care facility willing
 1-48 to comply with the directive or treatment decision.

1-49 SECTION 4. Sections 166.046(a), (b), (d), (e), and (e-1),
 1-50 Health and Safety Code, are amended to read as follows:

1-51 (a) If an attending physician refuses to honor a patient's
 1-52 advance directive or a health care or treatment decision made by or
 1-53 on behalf of a patient, other than a directive or decision to
 1-54 provide artificial nutrition and hydration to the patient, the
 1-55 physician's refusal shall be reviewed by an ethics or medical
 1-56 committee. The attending physician may not be a member of that
 1-57 committee. The patient shall be given life-sustaining treatment
 1-58 during the review.

1-59 (b) The patient or the person responsible for the health
 1-60 care decisions of the individual who has made the decision

2-1 regarding the directive or treatment decision:
2-2 (1) may be given a written description of the ethics or
2-3 medical committee review process and any other policies and
2-4 procedures related to this section adopted by the health care
2-5 facility;
2-6 (2) shall be informed of the committee review process
2-7 not less than 48 hours before the meeting called to discuss the
2-8 patient's directive, unless the time period is waived by mutual
2-9 agreement;
2-10 (3) at the time of being so informed, shall be
2-11 provided:
2-12 (A) a copy of the appropriate statement set forth
2-13 in Section 166.052; and
2-14 (B) a copy of the registry list of health care
2-15 providers and referral groups that have volunteered their readiness
2-16 to consider accepting transfer or to assist in locating a provider
2-17 willing to accept transfer that is posted on the website maintained
2-18 by the department under Section 166.053; and
2-19 (4) is entitled to:
2-20 (A) attend the meeting;
2-21 (B) receive a written explanation of the
2-22 recommendations made [~~decision reached~~] during the review process;
2-23 (C) receive a copy of the portion of the
2-24 patient's medical record related to the treatment received by the
2-25 patient in the facility for the lesser of:
2-26 (i) the period of the patient's current
2-27 admission to the facility; or
2-28 (ii) the preceding 30 calendar days; and
2-29 (D) receive a copy of all of the patient's
2-30 reasonably available diagnostic results and reports related to the
2-31 medical record provided under Paragraph (C).
2-32 (d) If the attending physician, the patient, or the person
2-33 responsible for the health care decisions of the individual does
2-34 not agree with the recommendations made [~~decision reached~~] during
2-35 the review process under Subsection (b), the physician shall make a
2-36 reasonable effort to transfer the patient to a physician who is
2-37 willing to comply with the directive. If the patient is a patient in
2-38 a health care facility, the facility's personnel shall assist the
2-39 physician in arranging the patient's transfer to:
2-40 (1) another physician;
2-41 (2) an alternative care setting within that facility;
2-42 or
2-43 (3) another facility.
2-44 (e) If the patient or the person responsible for the health
2-45 care decisions of the patient is requesting life-sustaining
2-46 treatment that the attending physician [~~has decided~~] and the ethics
2-47 or medical committee consider [~~has affirmed is~~] medically
2-48 inappropriate treatment, the patient shall be given available
2-49 life-sustaining treatment pending transfer under Subsection (d).
2-50 This subsection does not authorize withholding or withdrawing pain
2-51 management medication, medical procedures necessary to provide
2-52 comfort, or any other health care provided to alleviate a patient's
2-53 pain. [~~The patient is responsible for any costs incurred in~~
2-54 ~~transferring the patient to another facility.~~] The attending
2-55 physician, any other physician responsible for the care of the
2-56 patient, and the health care facility are not obligated to provide
2-57 life-sustaining treatment after the 90th [~~10th~~] day after both the
2-58 written recommendation [~~decision~~] and the patient's medical record
2-59 required under Subsection (b) are provided to the patient or the
2-60 person responsible for the health care decisions of the patient
2-61 unless ordered to do so under Subsection (g), except that
2-62 artificially administered nutrition and hydration must be provided
2-63 unless, based on reasonable medical judgment, providing
2-64 artificially administered nutrition and hydration would:
2-65 (1) hasten the patient's death;
2-66 (2) be medically contraindicated such that the
2-67 provision of the treatment seriously exacerbates life-threatening
2-68 medical problems not outweighed by the benefit of the provision of
2-69 the treatment;

3-1 (3) result in substantial irremediable physical pain
3-2 not outweighed by the benefit of the provision of the treatment;

3-3 (4) be medically ineffective in prolonging life; or

3-4 (5) be contrary to the patient's or surrogate's
3-5 clearly documented desire not to receive artificially administered
3-6 nutrition or hydration.

3-7 (e-1) If during a previous admission to a facility a
3-8 patient's attending physician and the review process under
3-9 Subsection (b) have determined that life-sustaining treatment is
3-10 inappropriate, and the patient is readmitted to the same facility
3-11 within six months from the date of the recommendations made
3-12 [~~decision reached~~] during the review process conducted upon the
3-13 previous admission, Subsections (b) through (e) need not be
3-14 followed if the patient's attending physician and a consulting
3-15 physician who is a member of the ethics or medical committee of the
3-16 facility document on the patient's readmission that the patient's
3-17 condition either has not improved or has deteriorated since the
3-18 review process was conducted.

3-19 SECTION 5. Section 166.051, Health and Safety Code, is
3-20 amended to read as follows:

3-21 Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
3-22 This subchapter does not impair or supersede any legal right or
3-23 responsibility a person may have to effect the withholding or
3-24 withdrawal of life-sustaining treatment in a lawful manner,
3-25 provided that if an attending physician or health care facility is
3-26 unwilling to honor a patient's advance directive or a treatment
3-27 decision to provide life-sustaining treatment, life-sustaining
3-28 treatment must [~~is required to~~] be provided to the patient in
3-29 accordance with this chapter [~~, but only until a reasonable~~
3-30 ~~opportunity has been afforded for transfer of the patient to~~
3-31 ~~another physician or health care facility willing to comply with~~
3-32 ~~the advance directive or treatment decision].~~

3-33 SECTION 6. Section 166.052(a), Health and Safety Code, is
3-34 amended to read as follows:

3-35 (a) In cases in which the attending physician refuses to
3-36 honor an advance directive or health care or treatment decision
3-37 requesting the provision of life-sustaining treatment, the
3-38 statement required by Section 166.046(b)(3)(A) shall be in
3-39 substantially the following form:

3-40 When There Is A Disagreement About Medical Treatment: The Physician
3-41 Recommends Against Certain Life-Sustaining Treatment That You Wish
3-42 To Continue

3-43 You have been given this information because you have
3-44 requested life-sustaining treatment* for yourself as the patient or
3-45 on behalf of the patient, as applicable, which the attending
3-46 physician believes is not medically appropriate. This information
3-47 is being provided to help you understand state law, your rights, and
3-48 the resources available to you in such circumstances. It outlines
3-49 the process for resolving disagreements about treatment among
3-50 patients, families, and physicians. It is based upon Section
3-51 166.046 of the Texas Advance Directives Act, codified in Chapter
3-52 166, Texas Health and Safety Code.

3-53 When an attending physician refuses to comply with an advance
3-54 directive or other request for life-sustaining treatment because of
3-55 the physician's judgment that the treatment would be medically
3-56 inappropriate, the case will be reviewed by an ethics or medical
3-57 committee. Life-sustaining treatment will be provided through the
3-58 review.

3-59 You will receive notification of this review at least 48
3-60 hours before a meeting of the committee related to your case. You
3-61 are entitled to attend the meeting. With your agreement, the
3-62 meeting may be held sooner than 48 hours, if possible.

3-63 You are entitled to receive a written explanation of the
3-64 recommendations made [~~decision reached~~] during the review process.

3-65 If after this review process both the attending physician and
3-66 the ethics or medical committee conclude that life-sustaining
3-67 treatment is medically inappropriate and yet you continue to
3-68 request such treatment, then the following procedure will occur:

3-69 1. The physician, with the help of the health care facility,

4-1 will assist you in trying to find a physician and facility willing
4-2 to provide the requested treatment.

4-3 2. You are being given a list of health care providers,
4-4 licensed physicians, health care facilities, and referral groups
4-5 that have volunteered their readiness to consider accepting
4-6 transfer, or to assist in locating a provider willing to accept
4-7 transfer, maintained by the Department of State Health Services.
4-8 You may wish to contact providers, facilities, or referral groups
4-9 on the list or others of your choice to get help in arranging a
4-10 transfer.

4-11 3. The patient will continue to be given life-sustaining
4-12 treatment until the patient can be transferred to a willing
4-13 provider for up to 90 [~~10~~] days from the time you were given both the
4-14 committee's written decision that life-sustaining treatment is not
4-15 appropriate and the patient's medical record. The patient will
4-16 continue to be given after the 90-day [~~10-day~~] period treatment to
4-17 enhance pain management and reduce suffering, including
4-18 artificially administered nutrition and hydration, unless, based
4-19 on reasonable medical judgment, providing artificially
4-20 administered nutrition and hydration would hasten the patient's
4-21 death, be medically contraindicated such that the provision of the
4-22 treatment seriously exacerbates life-threatening medical problems
4-23 not outweighed by the benefit of the provision of the treatment,
4-24 result in substantial irremediable physical pain not outweighed by
4-25 the benefit of the provision of the treatment, be medically
4-26 ineffective in prolonging life, or be contrary to the patient's or
4-27 surrogate's clearly documented desires.

4-28 4. [~~If a transfer can be arranged, the patient will be~~
4-29 ~~responsible for the costs of the transfer.~~

4-30 [~~5.~~] If a provider cannot be found willing to give the
4-31 requested treatment within 90 [~~10~~] days, life-sustaining treatment
4-32 may be withdrawn unless a court of law has granted an extension.

4-33 5. [~~6.~~] You may ask the appropriate district or county court
4-34 to extend the 90-day [~~10-day~~] period if the court finds that there
4-35 is a reasonable expectation that you may find a physician or health
4-36 care facility willing to provide life-sustaining treatment if the
4-37 extension is granted. Patient medical records will be provided to
4-38 the patient or surrogate in accordance with Section 241.154, Texas
4-39 Health and Safety Code.

4-40 *"Life-sustaining treatment" means treatment that, based on
4-41 reasonable medical judgment, sustains the life of a patient and
4-42 without which the patient will die. The term includes both
4-43 life-sustaining medications and artificial life support, such as
4-44 mechanical breathing machines, kidney dialysis treatment, and
4-45 artificially administered nutrition and hydration. The term does
4-46 not include the administration of pain management medication or the
4-47 performance of a medical procedure considered to be necessary to
4-48 provide comfort care, or any other medical care provided to
4-49 alleviate a patient's pain.

4-50 SECTION 7. The changes in law made by this Act apply only to
4-51 a health care or treatment decision made on or after the effective
4-52 date of this Act.

4-53 SECTION 8. This Act takes effect immediately if it receives
4-54 a vote of two-thirds of all the members elected to each house, as
4-55 provided by Section 39, Article III, Texas Constitution. If this
4-56 Act does not receive the vote necessary for immediate effect, this
4-57 Act takes effect September 1, 2021.

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