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et al.

H.B. No. 3162

A BILL TO BE ENTITLED

AN ACT

relating to advance directives, do-not-resuscitate orders, and health care treatment decisions made by or on behalf of certain patients, including a review of directives and decisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.0445 to read as follows:

Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING CERTAIN MEDICAL PROCEDURES. (a) A physician or a health care professional acting under the direction of a physician is not subject to civil liability for participating in a medical procedure performed under Section 166.046(d-2).

(b) A physician or a health care professional acting under the direction of a physician is not subject to criminal liability for participating in a medical procedure performed under Section 166.046(d-2) unless:

(1) the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to cause the death of the patient and that conduct significantly hastened the patient's death; and

(2) the hastening of the patient's death is not attributable to the risks associated with the medical procedure.

(c) A physician or a health care professional acting under the direction of a physician has not engaged in unprofessional

1 conduct by participating in a medical procedure performed under
2 Section 166.046(d-2) unless the physician or health care
3 professional in participating in the medical procedure acted with a
4 specific malicious intent to harm the patient.

5 SECTION 2. The heading to Section 166.046, Health and
6 Safety Code, is amended to read as follows:

7 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING [A] DIRECTIVE
8 OR TREATMENT DECISION FOR CERTAIN PATIENTS.

9 SECTION 3. Section 166.046, Health and Safety Code, is
10 amended by amending Subsections (a), (b), (c), (d), (e), and (g) and
11 adding Subsections (a-1), (a-2), (b-1), (b-2), (b-3), (d-1), (d-2),
12 (d-3), and (i) to read as follows:

13 (a) This section applies only to health care and treatment
14 for a patient who is determined to be incompetent or is otherwise
15 mentally or physically incapable of communication.

16 (a-1) If an attending physician refuses to honor an [~~a~~
17 ~~patient's~~] advance directive of or [~~a~~] health care or treatment
18 decision made by or on behalf of a patient to whom this section
19 applies, the physician's refusal shall be reviewed by an ethics or
20 medical committee. The attending physician may not be a member of
21 that committee during the review. The patient shall be given
22 life-sustaining treatment during the review.

23 (a-2) An ethics or medical committee that reviews a
24 physician's refusal to honor an advance directive or health care or
25 treatment decision under Subsection (a-1) shall consider the
26 patient's well-being in conducting the review but may not make any
27 judgment on the patient's quality of life. For purposes of this

1 section, a decision by the committee based on any of the
2 considerations described by Subdivisions (1) through (5) is not a
3 judgment on the patient's quality of life. If the review requires
4 the committee to determine whether life-sustaining treatment
5 requested in the patient's advance directive or by the person
6 responsible for the patient's health care decisions is medically
7 inappropriate, the committee shall consider whether provision of
8 the life-sustaining treatment:

9 (1) will prolong the natural process of dying or
10 hasten the patient's death;

11 (2) will result in substantial, irremediable, and
12 objectively measurable physical pain that is not outweighed by the
13 benefit of providing the treatment;

14 (3) is medically contraindicated such that the
15 provision of the treatment seriously exacerbates life-threatening
16 medical problems not outweighed by the benefit of providing the
17 treatment;

18 (4) is consistent with the prevailing standard of
19 care; or

20 (5) is contrary to the patient's clearly documented
21 desires.

22 (b) The [~~patient or the~~] person responsible for the
23 patient's health care decisions [~~of the individual who has made the~~
24 ~~decision regarding the directive or treatment decision~~]:

25 (1) [~~may be given a written description of the ethics~~
26 ~~or medical committee review process and any other policies and~~
27 ~~procedures related to this section adopted by the health care~~

1 ~~facility;~~

2 ~~[(2)]~~ shall be informed in writing ~~[of the committee~~
3 ~~review process]~~ not less than seven calendar days ~~[48 hours]~~ before
4 the meeting called to discuss the patient's directive, unless the
5 ~~[time]~~ period is waived by written mutual agreement, of:

6 (A) the ethics or medical committee review
7 process and any other related policies and procedures adopted by
8 the health care facility, including any policy described by
9 Subsection (b-1);

10 (B) the rights described in Subdivisions
11 (3)(A)-(D);

12 (C) the date, time, and location of the meeting;

13 (D) the work contact information of the
14 facility's personnel who, in the event of a disagreement, will be
15 responsible for overseeing the reasonable effort to transfer the
16 patient to another physician or facility willing to comply with the
17 directive;

18 (E) the factors the committee is required to
19 consider under Subsection (a-2); and

20 (F) the language in Section 166.0465;

21 (2) ~~[(3)]~~ at the time of being ~~[so]~~ informed under
22 Subdivision (1), shall be provided:

23 (A) a copy of the appropriate statement set forth
24 in Section 166.052; and

25 (B) a copy of the registry list of health care
26 providers and referral groups that have volunteered their readiness
27 to consider accepting transfer or to assist in locating a provider

1 willing to accept transfer that is posted on the website maintained
2 by the department under Section 166.053; and

3 (3) [~~4~~] is entitled to:

4 (A) attend and participate in the meeting as
5 scheduled by the committee;

6 (B) receive during the meeting a written
7 statement of the first name, first initial of the last name, and
8 title of each committee member who will participate in the meeting;

9 (C) subject to Subsection (b-1):

10 (i) be accompanied at the meeting by the
11 patient's spouse, parents, adult children, and not more than four
12 additional individuals, including legal counsel, a physician, a
13 health care professional, or a patient advocate, selected by the
14 person responsible for the patient's health care decisions; and

15 (ii) have an opportunity during the open
16 portion of the meeting to either directly or through another
17 individual attending the meeting:

18 (a) explain the justification for the
19 health care or treatment request made by or on behalf of the
20 patient;

21 (b) respond to information relating
22 to the patient that is submitted or presented during the open
23 portion of the meeting; and

24 (c) state any concerns of the person
25 responsible for the patient's health care decisions regarding
26 compliance with this section or Section 166.0465, including stating
27 an opinion that one or more of the patient's disabilities are not

1 relevant to the committee's determination of whether the medical or
2 surgical intervention is medically appropriate;

3 (D) receive a written notice [explanation] of:

4 (i) the decision reached during the review
5 process accompanied by an explanation of the decision, including,
6 if applicable, the committee's reasoning for affirming that
7 requested life-sustaining treatment is medically inappropriate;

8 (ii) the patient's major medical conditions
9 as identified by the committee, including any disability of the
10 patient considered by the committee in reaching the decision,
11 except the notice is not required to specify whether any medical
12 condition qualifies as a disability;

13 (iii) a statement that the committee has
14 complied with Subsection (a-2) and Section 166.0465; and

15 (iv) the health care facilities contacted
16 before the meeting as part of the transfer efforts under Subsection
17 (d) and, for each listed facility that denied the request to
18 transfer the patient and provided a reason for the denial, the
19 provided reason;

20 (E) [~~C~~] receive a copy of or electronic access
21 to the portion of the patient's medical record related to the
22 treatment received by the patient in the facility for [~~the lesser~~
23 of.

24 [~~i~~] the period of the patient's current
25 admission to the facility; [~~or~~

26 [~~ii~~ the preceding 30 calendar days,] and

27 (F) [~~D~~] receive a copy of or electronic access

1 to all of the patient's reasonably available diagnostic results and
2 reports related to the medical record provided under Paragraph (E)
3 [~~(C)~~].

4 (b-1) A health care facility may adopt and implement a
5 written policy for meetings held under this section that is
6 reasonable and necessary to:

7 (1) facilitate information sharing and discussion of
8 the patient's medical status and treatment requirements, including
9 provisions related to attendance, confidentiality, and timing
10 regarding any agenda item; and

11 (2) preserve the effectiveness of the meeting,
12 including provisions disclosing that the meeting is not a legal
13 proceeding and the committee will enter into an executive session
14 for deliberations.

15 (b-2) Notwithstanding Subsection (b)(3), the following
16 individuals may not attend or participate in the executive session
17 of an ethics or medical committee under this section:

18 (1) the physicians or health care professionals
19 providing health care and treatment to the patient; or

20 (2) the person responsible for the patient's health
21 care decisions or any person attending the meeting under Subsection
22 (b)(3)(C)(i).

23 (b-3) If the health care facility or person responsible for
24 the patient's health care decisions intends to have legal counsel
25 attend the meeting of the ethics or medical committee, the facility
26 or person, as applicable, shall make a good faith effort to provide
27 written notice of that intention not less than 48 hours before the

1 meeting begins.

2 (c) The written notice [~~explanation~~] required by Subsection
3 (b)(3)(D)(i) [~~Subsection (b)(4)(B)~~] must be included in the
4 patient's medical record.

5 (d) After written notice is provided under Subsection
6 (b)(1), [~~If~~] the patient's attending physician [~~, the patient, or~~
7 ~~the person responsible for the health care decisions of the~~
8 ~~individual does not agree with the decision reached during the~~
9 ~~review process under Subsection (b), the physician] shall make a
10 reasonable effort to transfer the patient to a physician who is
11 willing to comply with the directive. The health care [~~If the~~
12 ~~patient is a patient in a health care facility, the] facility's
13 personnel shall assist the physician in arranging the patient's
14 transfer to:~~~~

- 15 (1) another physician;
16 (2) an alternative care setting within that facility;
17 or
18 (3) another facility.

19 (d-1) If another health care facility denies the patient's
20 transfer request, the personnel of the health care facility
21 assisting with the patient's transfer efforts under Subsection (d)
22 shall make a good faith effort to inquire whether the facility that
23 denied the patient's transfer request would be more likely to
24 approve the transfer request if a medical procedure, as that term is
25 defined in this section, is performed on the patient.

26 (d-2) If the patient's advance directive or the person
27 responsible for the patient's health care decisions is requesting

1 life-sustaining treatment that the attending physician has decided
2 and the ethics or medical committee has affirmed is medically
3 inappropriate:

4 (1) the attending physician or another physician
5 responsible for the care of the patient shall perform on the patient
6 each medical procedure that satisfies all of the following
7 conditions:

8 (A) in the attending physician's judgment, the
9 medical procedure is reasonable and necessary to help effect the
10 patient's transfer under Subsection (d);

11 (B) an authorized representative for another
12 health care facility with the ability to comply with the patient's
13 advance directive or the health care or treatment decision made by
14 or on behalf of the patient has expressed to the personnel described
15 by Subsection (b)(1)(D) or the attending physician that the
16 facility is more likely to accept the patient's transfer to the
17 other facility if the medical procedure is performed on the
18 patient;

19 (C) in the medical judgment of the physician who
20 would perform the medical procedure, performing the medical
21 procedure is:

22 (i) within the prevailing standard of
23 medical care; and

24 (ii) not medically contraindicated or
25 medically inappropriate under the circumstances;

26 (D) in the medical judgment of the physician who
27 would perform the medical procedure, the physician has the training

1 and experience to perform the medical procedure;

2 (E) the physician who would perform the medical
3 procedure has medical privileges at the facility where the patient
4 is receiving care authorizing the physician to perform the medical
5 procedure at the facility;

6 (F) the facility where the patient is receiving
7 care has determined the facility has the resources for the
8 performance of the medical procedure at the facility; and

9 (G) the person responsible for the patient's
10 health care decisions provides consent on behalf of the patient for
11 the medical procedure; and

12 (2) the person responsible for the patient's health
13 care decisions is entitled to receive:

14 (A) a delay notice:

15 (i) if, at the time the written decision is
16 provided as required by Subsection (b)(3)(D)(i), a medical
17 procedure satisfies all of the conditions described by Subdivision
18 (1); or

19 (ii) if:

20 (a) at the time the written decision
21 is provided as required by Subsection (b)(3)(D)(i), a medical
22 procedure satisfies all of the conditions described by Subdivision
23 (1) except Subdivision (1)(G); and

24 (b) the person responsible for the
25 patient's health care decisions provides to the attending physician
26 or another physician or health care professional providing direct
27 care to the patient consent on behalf of the patient for the medical

1 procedure within 24 hours of the request for consent;

2 (B) a start notice:

3 (i) if, at the time the written decision is
4 provided as required by Subsection (b)(3)(D)(i), no medical
5 procedure satisfies all of the conditions described by Subdivisions
6 (1)(A) through (F); or

7 (ii) if:

8 (a) at the time the written decision
9 is provided as required by Subsection (b)(3)(D)(i), a medical
10 procedure satisfies all of the conditions described by Subdivision
11 (1) except Subdivision (1)(G); and

12 (b) the person responsible for the
13 patient's health care decisions does not provide to the attending
14 physician or another physician or health care professional
15 providing direct care to the patient consent on behalf of the
16 patient for the medical procedure within 24 hours of the request for
17 consent; and

18 (C) a start notice accompanied by a statement
19 that one or more of the conditions described by Subdivisions (1)(A)
20 through (G) are no longer satisfied if, after a delay notice is
21 provided in accordance with Subdivision (2)(A) and before the
22 medical procedure on which the delay notice is based is performed on
23 the patient, one or more of those conditions are no longer
24 satisfied.

25 (d-3) After the 25-day period described by Subsection (e)
26 begins, the period may not be suspended or stopped for any reason.
27 This subsection does not limit or affect a court's ability to order

1 an extension of the period in accordance with Subsection (g).
2 Subsection (d-2) does not require a medical procedure to be
3 performed on the patient after the expiration of the 25-day period.

4 (e) If the patient's advance directive [~~patient~~] or the
5 person responsible for the patient's health care decisions [~~of the~~
6 ~~patient~~] is requesting life-sustaining treatment that the
7 attending physician has decided and the ethics or medical committee
8 has affirmed is medically inappropriate treatment, the patient
9 shall be given available life-sustaining treatment pending
10 transfer under Subsection (d). This subsection does not authorize
11 withholding or withdrawing pain management medication, medical
12 interventions [~~procedures~~] necessary to provide comfort, or any
13 other health care provided to alleviate a patient's pain. The
14 patient is responsible for any costs incurred in transferring the
15 patient to another health care facility. The attending physician,
16 any other physician responsible for the care of the patient, and the
17 health care facility are not obligated to provide life-sustaining
18 treatment after the 25th calendar [~~10th~~] day after a start notice is
19 [~~both the written decision and the patient's medical record~~
20 ~~required under Subsection (b) are~~] provided in accordance with
21 Subsection (d-2)(2)(B) or (C) to [~~the patient or~~] the person
22 responsible for the patient's health care decisions or a medical
23 procedure for which a delay notice was provided in accordance with
24 Subsection (d-2)(2)(A) is performed, whichever occurs first, [~~of~~
25 ~~the patient~~] unless ordered to extend the 25-day period [~~do so~~]
26 under Subsection (g), except that artificially administered
27 nutrition and hydration must be provided unless, based on

1 reasonable medical judgment, providing artificially administered
2 nutrition and hydration would:

3 (1) hasten the patient's death;

4 (2) be medically contraindicated such that the
5 provision of the treatment seriously exacerbates life-threatening
6 medical problems not outweighed by the benefit of providing [~~the~~
7 ~~provision of~~] the treatment;

8 (3) result in substantial, irremediable, and
9 objectively measurable physical pain not outweighed by the benefit
10 of providing [~~the provision of~~] the treatment;

11 (4) be medically ineffective in prolonging life; or

12 (5) be contrary to the patient's or surrogate's
13 clearly documented desire not to receive artificially administered
14 nutrition or hydration.

15 (g) At the request of [~~the patient or~~] the person
16 responsible for the patient's health care decisions [~~of the~~
17 ~~patient~~], the appropriate district or county court shall extend the
18 [~~time~~] period provided under Subsection (e) only if the court
19 finds, by a preponderance of the evidence, that there is a
20 reasonable expectation that a physician or health care facility
21 that will honor the patient's directive will be found if the time
22 extension is granted.

23 (i) In this section:

24 (1) "Delay notice" means a written notice that the
25 first day of the 25-day period provided under Subsection (e), after
26 which life-sustaining treatment may be withheld or withdrawn unless
27 a court has granted an extension under Subsection (g), will be

1 delayed until the calendar day after a medical procedure required
2 by Subsection (d-2)(1) is performed unless, before the medical
3 procedure is performed, the person receives written notice of an
4 earlier first day because one or more conditions described by that
5 subdivision are no longer satisfied.

6 (2) "Medical procedure" means only a tracheostomy or a
7 percutaneous endoscopic gastrostomy.

8 (3) "Start notice" means a written notice that the
9 25-day period provided under Subsection (e), after which
10 life-sustaining treatment may be withheld or withdrawn unless a
11 court has granted an extension under Subsection (g), will begin on
12 the first calendar day after the date the notice is provided.

13 SECTION 4. Subchapter B, Chapter 166, Health and Safety
14 Code, is amended by adding Section 166.0465 to read as follows:

15 Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED
16 TO PATIENT DISABILITY. (a) In this section, "disability" has the
17 meaning assigned by the Americans with Disabilities Act of 1990 in
18 42 U.S.C. Section 12102.

19 (b) During the review process under Section 166.046(b), the
20 ethics or medical committee may not consider a patient's disability
21 that existed before the patient's current admission unless the
22 disability is relevant in determining whether the medical or
23 surgical intervention is medically appropriate.

24 SECTION 5. Sections 166.052(a) and (b), Health and Safety
25 Code, are amended to read as follows:

26 (a) In cases in which the attending physician refuses to
27 honor an advance directive or health care or treatment decision

1 requesting the provision of life-sustaining treatment for a patient
2 who is determined to be incompetent or is otherwise mentally or
3 physically incapable of communication, the statement required by
4 Section 166.046(b)(2)(A) [~~166.046(b)(3)(A)~~] shall be in
5 substantially the following form:

6 When There Is A Disagreement About Medical Treatment: The
7 Physician Recommends Against Certain Life-Sustaining Treatment
8 That You Wish To Continue

9 You have been given this information because the patient has
10 requested through an advance directive or you have requested on
11 behalf of the patient that life-sustaining treatment* be provided
12 to [~~for yourself as the patient or on behalf of~~] the patient, [~~as~~
13 ~~applicable,~~] which the attending physician believes is not
14 medically appropriate. This information is being provided to help
15 you understand state law, your rights, and the resources available
16 to you in such circumstances. It outlines the process for resolving
17 disagreements about treatment among patients, families, and
18 physicians. It is based upon Section 166.046 of the Texas Advance
19 Directives Act, codified in Chapter 166, Texas Health and Safety
20 Code.

21 When an attending physician refuses to comply with an advance
22 directive or other request for life-sustaining treatment for a
23 patient who is determined to be incompetent or is otherwise
24 mentally or physically incapable of communication because of the
25 physician's judgment that the treatment would be medically
26 inappropriate, the case will be reviewed by an ethics or medical
27 committee. Life-sustaining treatment will be provided through the

1 review.

2 You will receive notification of this review at least seven
3 calendar days [~~48 hours~~] before a meeting of the committee related
4 to your case. You are entitled to attend the meeting. With your
5 agreement, the meeting may be held sooner than seven calendar days
6 [~~48 hours~~], if possible.

7 You are entitled to receive a written explanation of the
8 decision reached during the review process.

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

13 1. The physician, with the help of the health care facility,
14 will assist you in trying to find a physician and facility willing
15 to provide the requested treatment.

16 2. You are being given a list of health care providers,
17 licensed physicians, health care facilities, and referral groups
18 that have volunteered their readiness to consider accepting
19 transfer, or to assist in locating a provider willing to accept
20 transfer, maintained by the Department of State Health Services.
21 You may wish to contact providers, facilities, or referral groups
22 on the list or others of your choice to get help in arranging a
23 transfer.

24 3. The patient will continue to be given life-sustaining
25 treatment until the patient can be transferred to a willing
26 provider for up to 25 calendar [~~10~~] days from the time you were
27 given a written notice of the first day of the 25-day period or a

1 medical procedure is performed that delayed the 25-day period and
2 for which you received notice, whichever occurs first [~~both the~~
3 ~~committee's written decision that life-sustaining treatment is not~~
4 ~~appropriate and the patient's medical record~~]. The patient will
5 continue to be given after the 25-day [~~10-day~~] period treatment to
6 enhance pain management and reduce suffering, including
7 artificially administered nutrition and hydration, unless, based
8 on reasonable medical judgment, providing artificially
9 administered nutrition and hydration would hasten the patient's
10 death, be medically contraindicated such that the provision of the
11 treatment seriously exacerbates life-threatening medical problems
12 not outweighed by the benefit of the provision of the treatment,
13 result in substantial irremediable physical pain not outweighed by
14 the benefit of the provision of the treatment, be medically
15 ineffective in prolonging life, or be contrary to the patient's or
16 surrogate's clearly documented desires.

17 4. If a transfer can be arranged, the patient will be
18 responsible for the costs of the transfer.

19 5. If a provider cannot be found willing to give the
20 requested treatment within 25 calendar [~~10~~] days, life-sustaining
21 treatment may be withdrawn unless a court of law has granted an
22 extension.

23 6. You may ask the appropriate district or county court to
24 extend the 25-day [~~the 10-day~~] period if the court finds that there
25 is a reasonable expectation that you may find a physician or health
26 care facility willing to provide life-sustaining treatment if the
27 extension is granted. Patient medical records will be provided to

1 the patient or surrogate in accordance with Section 241.154, Texas
2 Health and Safety Code.

3 *"Life-sustaining treatment" means treatment that, based on
4 reasonable medical judgment, sustains the life of a patient and
5 without which the patient will die. The term includes both
6 life-sustaining medications and artificial life support, such as
7 mechanical breathing machines, kidney dialysis treatment, and
8 artificially administered nutrition and hydration. The term does
9 not include the administration of pain management medication or the
10 performance of a medical procedure considered to be necessary to
11 provide comfort care, or any other medical care provided to
12 alleviate a patient's pain.

13 (b) In cases in which the attending physician refuses to
14 comply with an advance directive or a health care or treatment
15 decision requesting the withholding or withdrawal of
16 life-sustaining treatment for a patient who is determined to be
17 incompetent or is otherwise mentally or physically incapable of
18 communication, the statement required by Section 166.046(b)(2)(A)
19 [~~166.046(b)(3)(A)~~] shall be in substantially the following form:

20 When There Is A Disagreement About Medical Treatment: The
21 Physician Recommends Life-Sustaining Treatment That You Wish To
22 Stop

23 You have been given this information because the patient has
24 requested through an advance directive or you have requested on
25 behalf of the patient that [~~the withdrawal or withholding of~~]
26 life-sustaining treatment* be withdrawn or withheld from [~~for~~
27 ~~yourself as the patient or on behalf of~~] the patient, [~~as~~

1 ~~applicable,~~] and the attending physician disagrees with and refuses
2 to comply with that request. The information is being provided to
3 help you understand state law, your rights, and the resources
4 available to you in such circumstances. It outlines the process for
5 resolving disagreements about treatment among patients, families,
6 and physicians. It is based upon Section 166.046 of the Texas
7 Advance Directives Act, codified in Chapter 166, Texas Health and
8 Safety Code.

9 When an attending physician refuses to comply with an advance
10 directive or other request for withdrawal or withholding of
11 life-sustaining treatment for any reason, the case will be reviewed
12 by an ethics or medical committee. Life-sustaining treatment will
13 be provided through the review.

14 You will receive notification of this review at least seven
15 calendar days [~~48 hours~~] before a meeting of the committee related
16 to your case. You are entitled to attend the meeting. With your
17 agreement, the meeting may be held sooner than seven calendar days
18 [~~48 hours~~], if possible.

19 You are entitled to receive a written explanation of the
20 decision reached during the review process.

21 If you or the attending physician do not agree with the
22 decision reached during the review process, and the attending
23 physician still refuses to comply with your request to withhold or
24 withdraw life-sustaining treatment, then the following procedure
25 will occur:

26 1. The physician, with the help of the health care facility,
27 will assist you in trying to find a physician and facility willing

1 to withdraw or withhold the life-sustaining treatment.

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

10 *"Life-sustaining treatment" means treatment that, based on
11 reasonable medical judgment, sustains the life of a patient and
12 without which the patient will die. The term includes both
13 life-sustaining medications and artificial life support, such as
14 mechanical breathing machines, kidney dialysis treatment, and
15 artificially administered nutrition and hydration. The term does
16 not include the administration of pain management medication or the
17 performance of a medical procedure considered to be necessary to
18 provide comfort care, or any other medical care provided to
19 alleviate a patient's pain.

20 SECTION 6. Subchapter B, Chapter 166, Health and Safety
21 Code, is amended by adding Section 166.054 to read as follows:

22 Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR
23 MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day
24 after the date written notice is provided under Section
25 166.046(b)(1), a health care facility shall prepare and submit to
26 the commission a report that contains the following information:

27 (1) the number of days that elapsed from the patient's

1 admission to the facility to the date notice was provided under
2 Section 166.046(b)(1);

3 (2) whether the ethics or medical committee met to
4 review the case under Section 166.046 and, if the committee did
5 meet, the number of days that elapsed from the date notice was
6 provided under Section 166.046(b)(1) to the date the meeting was
7 held;

8 (3) whether the patient was:

9 (A) transferred to a physician within the same
10 facility who was willing to comply with the patient's advance
11 directive or a health care or treatment decision made by or on
12 behalf of the patient;

13 (B) transferred to a different health care
14 facility; or

15 (C) discharged from the facility to a private
16 residence or other setting that is not a health care facility;

17 (4) whether the patient died while receiving
18 life-sustaining treatment at the facility;

19 (5) whether life-sustaining treatment was withheld or
20 withdrawn from the patient at the facility after expiration of the
21 time period described by Section 166.046(e) and, if so, the
22 disposition of the patient after the withholding or withdrawal of
23 life-sustaining treatment at the facility, as selected from the
24 following categories:

25 (A) the patient died at the facility;

26 (B) the patient is currently a patient at the
27 facility;

1 (C) the patient was transferred to a different
2 health care facility; or

3 (D) the patient was discharged from the facility
4 to a private residence or other setting that is not a health care
5 facility;

6 (6) the age group of the patient selected from the
7 following categories:

8 (A) 17 years of age or younger;

9 (B) 18 years of age or older and younger than 66
10 years of age; or

11 (C) 66 years of age or older;

12 (7) the health insurance coverage status of the
13 patient selected from the following categories:

14 (A) private health insurance coverage;

15 (B) public health plan coverage; or

16 (C) uninsured;

17 (8) the patient's sex;

18 (9) the patient's race;

19 (10) whether the facility was notified of and able to
20 reasonably verify any public disclosure of the contact information
21 for the facility's personnel, physicians or health care
22 professionals who provide care at the facility, or members of the
23 ethics or medical committee in connection with the patient's stay
24 at the facility; and

25 (11) whether the facility was notified of and able to
26 reasonably verify any public disclosure by facility personnel of
27 the contact information for the patient's immediate family members

1 or the person responsible for the patient's health care decisions
2 in connection with the patient's stay at the facility.

3 (b) The commission shall ensure information provided in
4 each report submitted by a health care facility under Subsection
5 (a) is kept confidential and not disclosed in any manner, except as
6 provided by this section.

7 (c) Not later than April 1 of each year, the commission
8 shall prepare and publish on the commission's Internet website a
9 report that contains:

10 (1) aggregate information compiled from the reports
11 submitted to the commission under Subsection (a) during the
12 preceding year on:

13 (A) the total number of written notices provided
14 under Section 166.046(b)(1);

15 (B) the average number of days described by
16 Subsection (a)(1);

17 (C) the total number of meetings held by ethics
18 or medical committees to review cases under Section 166.046;

19 (D) the average number of days described by
20 Subsection (a)(2);

21 (E) the total number of patients described by
22 Subsections (a)(3)(A), (B), and (C);

23 (F) the total number of patients described by
24 Subsection (a)(4);

25 (G) the total number of patients for whom
26 life-sustaining treatment was withheld or withdrawn after
27 expiration of the time period described by Section 166.046(e);

1 (H) the total number of cases for which the
2 facility was notified of and able to reasonably verify the public
3 disclosure of the contact information for the facility's personnel,
4 physicians or health care professionals who provide care at the
5 facility, or members of the ethics or medical committee in
6 connection with the patient's stay at the facility; and

7 (I) the total number of cases for which the
8 facility was notified of and able to reasonably verify the public
9 disclosure by facility personnel of contact information for the
10 patient's immediate family members or person responsible for the
11 patient's health care decisions in connection with the patient's
12 stay at the facility; and

13 (2) if the total number of reports submitted under
14 Subsection (a) for the preceding year is 10 or more, aggregate
15 information compiled from those reports on the total number of
16 patients categorized by:

17 (A) sex;

18 (B) race;

19 (C) age group, based on the categories described
20 by Subsection (a)(6);

21 (D) health insurance coverage status, based on
22 the categories described by Subsection (a)(7); and

23 (E) for patients for whom life-sustaining
24 treatment was withheld or withdrawn at the facility after
25 expiration of the period described by Section 166.046(e), the total
26 number of patients described by each of the following:

27 (i) Subsection (a)(5)(A);

1 (ii) Subsection (a)(5)(B);

2 (iii) Subsection (a)(5)(C); and

3 (iv) Subsection (a)(5)(D).

4 (d) If the commission receives fewer than 10 reports under
5 Subsection (a) for inclusion in an annual report required under
6 Subsection (c), the commission shall include in the next annual
7 report prepared after the commission receives 10 or more reports
8 the aggregate information for all years for which the information
9 was not included in a preceding annual report. The commission shall
10 include in the next annual report a statement that identifies each
11 year during which an underlying report was submitted to the
12 commission under Subsection (a).

13 (e) The annual report required by Subsection (c) or (d) may
14 not include any information that could be used alone or in
15 combination with other reasonably available information to
16 identify any individual, entity, or facility.

17 (f) The executive commissioner shall adopt rules to:

18 (1) establish a standard form for the reporting
19 requirements of this section; and

20 (2) protect and aggregate any information the
21 commission receives under this section.

22 (g) Information collected as required by this section or
23 submitted to the commission under this section:

24 (1) is not admissible in a civil or criminal
25 proceeding in which a physician, health care professional acting
26 under the direction of a physician, or health care facility is a
27 defendant;

1 (2) may not be used in relation to any disciplinary
2 action by a licensing or regulatory agency with oversight over a
3 physician, health care professional acting under the direction of a
4 physician, or health care facility; and

5 (3) is not public information or subject to disclosure
6 under Chapter 552, Government Code, except as permitted by Section
7 552.008, Government Code.

8 SECTION 7. Sections 166.203(a), (b), and (c), Health and
9 Safety Code, are amended to read as follows:

10 (a) A DNR order issued for a patient is valid only if [~~the~~
11 ~~patient's attending physician issues the order,~~] the order is
12 dated[~~7~~] and [~~the order~~]:

13 (1) is issued by a physician providing direct care to
14 the patient in compliance with:

15 (A) the written and dated directions of a patient
16 who was competent at the time the patient wrote the directions;

17 (B) the oral directions of a competent patient
18 delivered to or observed by two competent adult witnesses, at least
19 one of whom must be a person not listed under Section 166.003(2)(E)
20 or (F);

21 (C) the directions in an advance directive
22 enforceable under Section 166.005 or executed in accordance with
23 Section 166.032, 166.034, [~~or~~] 166.035, 166.082, 166.084, or
24 166.085;

25 (D) the directions of a patient's:

26 (i) legal guardian;

27 (ii) [~~or~~] agent under a medical power of

1 attorney acting in accordance with Subchapter D; or

2 (iii) proxy as designated and authorized by
3 a directive executed in accordance with Subchapter B to make a
4 treatment decision for the patient if the patient becomes
5 incompetent or otherwise mentally or physically incapable of
6 communication; or

7 (E) a treatment decision made in accordance with
8 Section 166.039; ~~or~~

9 (2) is issued by the patient's attending physician
10 and:

11 (A) the order is not contrary to the directions
12 of a patient who was competent at the time the patient conveyed the
13 directions; and

14 (B) ~~[7]~~ in the reasonable medical judgment of the
15 patient's attending physician:

16 (i) ~~[(A)]~~ the patient's death is imminent,
17 within minutes to hours, regardless of the provision of
18 cardiopulmonary resuscitation; and

19 (ii) ~~[(B)]~~ the DNR order is medically
20 appropriate; or

21 (3) is issued by the patient's attending physician:

22 (A) for a patient who is incompetent or otherwise
23 mentally or physically incapable of communication; and

24 (B) in compliance with a decision:

25 (i) agreed on by the attending physician
26 and the person responsible for the patient's health care decisions;

27 and

1 (ii) concurred in by another physician who
2 is not involved in the direct treatment of the patient or who is a
3 representative of an ethics or medical committee of the health care
4 facility in which the person is a patient.

5 (b) The DNR order takes effect at the time the order is
6 issued, provided the order is placed in the patient's medical
7 record as soon as practicable and may be issued and entered in a
8 format acceptable under the policies of the health care facility or
9 hospital.

10 (c) Unless notice is provided in accordance with Section
11 166.204(a), before ~~Before~~ placing in a patient's medical record a
12 DNR order issued under Subsection (a)(2), a ~~the~~ physician,
13 physician assistant, nurse, or other person acting on behalf of a
14 health care facility or hospital shall:

15 (1) inform the patient of the order's issuance; or

16 (2) if the patient is incompetent, make a reasonably
17 diligent effort to contact or cause to be contacted and inform of
18 the order's issuance:

19 (A) the patient's known agent under a medical
20 power of attorney or legal guardian; or

21 (B) for a patient who does not have a known agent
22 under a medical power of attorney or legal guardian, a person
23 described by Section 166.039(b)(1), (2), or (3).

24 SECTION 8. Section 166.204, Health and Safety Code, is
25 amended by amending Subsections (a), (b), and (c) and adding
26 Subsection (a-1) to read as follows:

27 (a) If an individual arrives at a health care facility or

1 hospital that is treating a patient for whom a DNR order is issued
2 under Section [166.203\(a\)\(2\)](#) and the individual notifies a
3 physician, physician assistant, or nurse providing direct care to
4 the patient of the individual's arrival, the physician, physician
5 assistant, or nurse who has actual knowledge of the order shall,
6 unless notice has been provided in accordance with Section
7 [166.203\(c\)](#), disclose the order to the individual, provided the
8 individual is:

9 (1) the patient's known agent under a medical power of
10 attorney or legal guardian; or

11 (2) for a patient who does not have a known agent under
12 a medical power of attorney or legal guardian, a person described by
13 Section [166.039\(b\)\(1\), \(2\), or \(3\)](#).

14 (a-1) For a patient who was incompetent at the time notice
15 otherwise would have been provided to the patient under Section
16 [166.203\(c\)\(1\)](#) and if a physician providing direct care to the
17 patient later determines that, based on the physician's reasonable
18 medical judgment, the patient has become competent, a physician,
19 physician assistant, or nurse providing direct care to the patient
20 shall disclose the order to the patient, provided that the
21 physician, physician assistant, or nurse has actual knowledge:

22 (1) of the order; and

23 (2) that a physician providing direct care to the
24 patient has determined that the patient has become competent.

25 (b) Failure to comply with Subsection (a) or (a-1) or
26 Section [166.203\(c\)](#) does not affect the validity of a DNR order
27 issued under this subchapter.

1 (c) Any person, including a health care facility or
2 hospital, [~~who makes a good faith effort to comply with Subsection~~
3 ~~(a) of this section or Section 166.203(c) and contemporaneously~~
4 ~~records the person's effort to comply with Subsection (a) of this~~
5 ~~section or Section 166.203(c) in the patient's medical record]~~ is
6 not civilly or criminally liable or subject to disciplinary action
7 from the appropriate licensing authority for any act or omission
8 related to providing notice under Subsection (a) or (a-1) of this
9 section or Section 166.203(c) if the person:

10 (1) makes a good faith effort to comply with
11 Subsection (a) or (a-1) or Section 166.203(c) and contemporaneously
12 records in the patient's medical record the person's effort to
13 comply with those provisions; or

14 (2) makes a good faith determination that the
15 circumstances that would require the person to perform an act under
16 Subsection (a) or (a-1) or Section 166.203(c) are not met.

17 SECTION 9. Section 166.205, Health and Safety Code, is
18 amended by amending Subsections (a), (b), and (c) and adding
19 Subsection (c-1) to read as follows:

20 (a) A physician providing direct care to a patient for whom
21 a DNR order is issued shall revoke the patient's DNR order if [~~the~~
22 ~~patient or, as applicable, the patient's agent under a medical~~
23 ~~power of attorney or the patient's legal guardian if the patient is~~
24 ~~incompetent~~]:

25 (1) an advance directive that serves as the basis of
26 the DNR order is properly revoked in accordance with this
27 chapter; [~~effectively revokes an advance directive, in accordance~~

1 ~~with Section 166.042, for which a DNR order is issued under Section~~
2 ~~166.203(a); or]~~

3 (2) the patient expresses to any person providing
4 direct care to the patient a revocation of consent to or intent to
5 revoke a DNR order issued under Section 166.203(a); or

6 (3) the DNR order was issued under Section
7 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person
8 responsible for the patient's health care decisions expresses to
9 any person providing direct care to the patient a revocation of
10 consent to or intent to revoke the DNR order.

11 (b) A person providing direct care to a patient under the
12 supervision of a physician shall notify the physician of the
13 request to revoke a DNR order or of the revocation of an advance
14 directive under Subsection (a).

15 (c) A patient's attending physician may at any time revoke a
16 DNR order issued under:

17 (1) Section 166.203(a)(1)(A), (B), or (C), provided
18 that:

19 (A) the order is for a patient who is incompetent
20 or otherwise mentally or physically incapable of communication; and

21 (B) the decision to revoke the order is:

22 (i) agreed on by the attending physician
23 and the person responsible for the patient's health care decisions;
24 and

25 (ii) concurred in by another physician who
26 is not involved in the direct treatment of the patient or who is a
27 representative of an ethics or medical committee of the health care

1 facility in which the person is a patient;

2 (2) Section 166.203(a)(1)(E), provided that the
3 order's issuance was based on a treatment decision made in
4 accordance with Section 166.039(e);

5 (3) Section 166.203(a)(2); or

6 (4) Section 166.203(a)(3).

7 (c-1) A patient's attending physician shall revoke a DNR
8 order issued for the patient under Section 166.203(a)(2) if, in the
9 attending physician's reasonable medical judgment, the condition
10 described by Section 166.203(a)(2)(B)(i) is no longer satisfied.

11 SECTION 10. Sections 166.206(a) and (b), Health and Safety
12 Code, are amended to read as follows:

13 (a) If a ~~[an attending]~~ physician, health care facility, or
14 hospital does not wish to execute or comply with a DNR order or the
15 patient's instructions concerning the provision of cardiopulmonary
16 resuscitation, the physician, facility, or hospital shall inform
17 the patient, the legal guardian or qualified relatives of the
18 patient, or the agent of the patient under a medical power of
19 attorney of the benefits and burdens of cardiopulmonary
20 resuscitation.

21 (b) If, after receiving notice under Subsection (a), the
22 patient or another person authorized to act on behalf of the patient
23 and the ~~[attending]~~ physician, health care facility, or hospital
24 remain in disagreement, the physician, facility, or hospital shall
25 make a reasonable effort to transfer the patient to another
26 physician, facility, or hospital willing to execute or comply with
27 a DNR order or the patient's instructions concerning the provision

1 of cardiopulmonary resuscitation.

2 SECTION 11. Section 166.209, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 166.209. ENFORCEMENT. (a) Subject to Sections
5 166.205(d), 166.207, and 166.208 and Subsection (c), a [A]
6 physician, physician assistant, nurse, or other person commits an
7 offense if, with the specific intent to violate this subchapter,
8 the person intentionally:

9 (1) conceals, cancels, effectuates, or falsifies
10 another person's DNR order in violation of this subchapter; or

11 (2) [if the person intentionally] conceals or
12 withholds personal knowledge of another person's revocation of a
13 DNR order in violation of this subchapter.

14 (a-1) An offense under Subsection (a) [this subsection] is a
15 Class A misdemeanor. This section [subsection] does not preclude
16 prosecution for any other applicable offense.

17 (b) Subject to Sections 166.205(d), 166.207, and 166.208, a
18 [A] physician, health care professional, health care facility,
19 hospital, or entity is subject to review and disciplinary action by
20 the appropriate licensing authority for intentionally:

21 (1) failing to effectuate a DNR order in violation of
22 this subchapter; or

23 (2) issuing a DNR order in violation of this
24 subchapter.

25 (c) Subsection (a) does not apply to a person whose act or
26 omission was based on a reasonable belief that the act or omission
27 was in compliance with the wishes of the patient or the person

1 responsible for the patient's health care decisions.

2 SECTION 12. Section 313.004, Health and Safety Code, is
3 amended by amending Subsections (a) and (c) and adding Subsection
4 (a-1) to read as follows:

5 (a) If an adult patient of a home and community support
6 services agency or in a hospital or nursing home, or an adult inmate
7 of a county or municipal jail, is comatose, incapacitated, or
8 otherwise mentally or physically incapable of communication and
9 does not have a legal guardian or an agent under a medical power of
10 attorney who is reasonably available after a reasonably diligent
11 inquiry, an adult surrogate from the following list, in order of
12 priority, who has decision-making capacity, is reasonably
13 available after a reasonably diligent inquiry, and is willing to
14 consent to medical treatment on behalf of the patient may consent to
15 medical treatment on behalf of the patient:

16 (1) the patient's spouse;

17 (2) the patient's [~~an adult child of the patient who~~
18 ~~has the waiver and consent of all other qualified~~] adult children
19 [~~of the patient to act as the sole decision-maker~~];

20 (3) [~~a majority of~~] the patient's parents [~~reasonably~~
21 ~~available adult children~~]; or

22 (4) the patient's nearest living relative [~~parents, or~~
23 [~~(5) the individual clearly identified to act for the~~
24 ~~patient by the patient before the patient became incapacitated, the~~
25 ~~patient's nearest living relative, or a member of the clergy~~].

26 (a-1) If the patient does not have a legal guardian, an
27 agent under a medical power of attorney, or a person listed in

1 Subsection (a) who is reasonably available after a reasonably
2 diligent inquiry, another physician who is not involved in the
3 medical treatment of the patient may concur with the treatment.

4 (c) Any medical treatment consented to under Subsection (a)
5 or concurred with under Subsection (a-1) must be based on knowledge
6 of what the patient would desire, if known.

7 SECTION 13. Chapter 166, Health and Safety Code, as amended
8 by this Act, applies only to a review, consultation, disagreement,
9 or other action relating to a health care or treatment decision made
10 on or after the effective date of this Act. A review, consultation,
11 disagreement, or other action relating to a health care or
12 treatment decision made before the effective date of this Act is
13 governed by the law in effect immediately before the effective date
14 of this Act, and the former law is continued in effect for that
15 purpose.

16 SECTION 14. Section 166.209, Health and Safety Code, as
17 amended by this Act, applies only to conduct that occurs on or after
18 the effective date of this Act. Conduct that occurs before the
19 effective date of this Act is governed by the law in effect on the
20 date the conduct occurred, and the former law is continued in effect
21 for that purpose.

22 SECTION 15. This Act takes effect September 1, 2023.