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H.B. No. 3162

A BILL TO BE ENTITLED

1 AN ACT
2 relating to advance directives and health care treatment decisions
3 made by or on behalf of patients, including a review of those
4 directives and decisions.

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

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

8 Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING
9 REQUIRED MEDICAL PROCEDURE. (a) A physician or health care
10 professional acting under the direction of a physician is not
11 subject to civil liability for conducting a medical procedure
12 required under Section 166.046(d-1).

13 (b) A physician or health care professional acting under the
14 direction of a physician is not subject to criminal liability for
15 conducting a medical procedure required under Section 166.046(d-1)
16 unless:

17 (1) the physician or health care professional in
18 conducting the medical procedure acted with a specific intent to
19 cause the death of the patient and that conduct hastened the
20 patient's death; and

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

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

1 by conducting a medical procedure required under Section
2 166.046(d-1) unless the physician or health care professional fails
3 to exercise reasonable medical judgment in conducting the medical
4 procedure. For purposes of this subsection, the standard of care
5 that a physician or health care professional must exercise is the
6 degree of care a physician or health care professional of ordinary
7 prudence and skill would have exercised under the same or similar
8 circumstances in the same or a similar community.

9 SECTION 2. 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), and (d-1) to read as
12 follows:

13 (a) This section applies only to the treatment and care of a
14 qualified patient who is declared incompetent or otherwise mentally
15 or physically incapable of communication.

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

22 (a-2) An ethics or medical committee that reviews a
23 physician's refusal to honor a patient's advance directive or
24 health care treatment decision under Subsection (a-1) shall
25 consider the patient's well-being in conducting the review. If the
26 review requires the committee to make a determination on whether
27 life-sustaining treatment requested in a patient's advance

1 directive or by the person responsible for the patient's health
2 care decisions is medically inappropriate, the committee shall
3 consider whether provision of the life-sustaining treatment:

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

6 (2) will cause harm or undesirable side effects
7 without a proportionate benefit to the patient;

8 (3) will exacerbate life-threatening medical problems
9 that outweigh the treatment benefits;

10 (4) will result in substantial irremediable physical
11 pain or other measurable suffering that outweigh the treatment
12 benefits;

13 (5) without regard to any judgment on the patient's
14 quality of life, will be medically ineffective at:

15 (A) improving the patient's current condition;

16 or

17 (B) reducing the patient's current medical
18 support level;

19 (6) is consistent with the prevailing standard of
20 care; or

21 (7) is contrary to the patient's clearly documented
22 desires.

23 (b) The [~~patient or the~~] person responsible for the
24 patient's health care decisions [~~of the individual~~] who has made
25 the decision regarding the directive or treatment decision or, for
26 a patient for whom a review is conducted under Subsection (a-1) and
27 who did not designate a person to make health care or treatment

1 decisions or who does not have a legal guardian or agent under a
2 medical power of attorney, a person in the priority order described
3 by Section 166.039(b):

4 (1) must [~~may be given a written description of the~~
5 ~~ethics or medical committee review process and any other policies~~
6 ~~and procedures related to this section adopted by the health care~~
7 ~~facility,~~

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

12 (A) the ethics or medical committee review
13 process and any other related policies and procedures adopted by
14 the health care facility, including any attendance and
15 confidentiality policy described by Subsection (b-1);

16 (B) the rights described in Subdivisions
17 (3)(A)-(D);

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

19 (D) the name, title, and work contact information
20 of the facility's personnel who, in the event of a disagreement
21 described by Subsection (d-1), will be responsible for overseeing
22 the transfer of the patient to another physician or facility that is
23 willing to comply with the directive; and

24 (E) the factors the committee is required to
25 consider under Subsection (a-2);

26 (2) [(3)] at the time of being [~~so~~] informed under
27 Subdivision (1), shall be provided:

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

3 (B) a copy of the registry list of health care
4 providers and referral groups that have volunteered their readiness
5 to consider accepting transfer or to assist in locating a provider
6 willing to accept transfer that is posted on the website maintained
7 by the department under Section 166.053; and

8 (3) [~~4~~] is entitled to:

9 (A) attend and participate in the meeting;

10 (B) receive before or during the meeting a
11 written statement of the full name and title of each committee
12 member who will participate in the meeting;

13 (C) subject to Subsection (b-2):

14 (i) be accompanied at the meeting by up to
15 10 individuals selected by the patient or surrogate, including
16 legal counsel, physicians, health care professionals, or patient
17 advocates; and

18 (ii) have an opportunity during the meeting
19 to either directly or through another individual:

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

23 (b) respond to information relating
24 to the patient that is submitted or presented during the meeting;
25 and

26 (c) state any concerns the patient or
27 surrogate has regarding compliance with this section or Section

1 166.0465;

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

3 (i) the decision reached during the review
4 process;

5 (ii) an explanation of the decision,
6 including, if applicable, the committee's reasoning for affirming
7 that life-sustaining treatment requested in the patient's advance
8 directive or by the person responsible for the patient's health
9 care decisions is medically inappropriate;

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

12 (iv) a list of the health care facilities
13 contacted before the meeting as part of the transfer efforts made
14 under Subsection (d) and, for each facility on the list that denied
15 the request to transfer the patient, any reason provided by the
16 facility for denying the request;

17 (E) [~~(C)~~] receive a copy of the portion of the
18 patient's medical record related to the treatment received by the
19 patient in the facility for the lesser of:

20 (i) the period of the patient's current
21 admission to the facility; or

22 (ii) the preceding 30 calendar days; and

23 (F) [~~(D)~~] receive a copy of all of the patient's
24 reasonably available diagnostic results and reports related to the
25 medical record provided under Paragraph (E) [~~(C)~~].

26 (b-1) A health care facility may adopt and implement a
27 written attendance and confidentiality policy for meetings held

1 under this section that is reasonable and necessary to:

2 (1) facilitate information sharing and discussion of
3 the patient's medical status and treatment requirements; and

4 (2) preserve the effectiveness of the meeting.

5 (b-2) Notwithstanding Subsection (b)(3), the following
6 individuals may not participate in the deliberations of an ethics
7 or medical committee under this section:

8 (1) the physicians or health care professionals
9 providing treatment and care to the patient; or

10 (2) the patient, the person entitled to written notice
11 of the meeting under Subsection (b)(1), or any person attending
12 under Subsection (b)(3)(C).

13 (c) The written notices [~~explanation~~] required by
14 Subsections (b)(3)(D)(i) and (ii) [~~Subsection (b)(4)(B)~~] must be
15 included in the patient's medical record.

16 (d) After written notice is provided under Subsection
17 (b)(1), [~~If~~] the patient's attending physician [~~, the patient, or~~
18 ~~the person responsible for the health care decisions of the~~
19 ~~individual does not agree with the decision reached during the~~
20 ~~review process under Subsection (b), the physician] shall make a
21 reasonable effort to transfer the patient to a physician who is
22 willing to comply with the directive. If the patient is a patient
23 in a health care facility, the facility's personnel shall assist
24 the physician in arranging the patient's transfer to:~~

25 (1) another physician;

26 (2) an alternative care setting within that facility;

27 or

1 (3) another facility.

2 (d-1) In this subsection, "medical procedure" means only a
3 tracheostomy or a percutaneous endoscopic gastrostomy. If the
4 person responsible for a patient's health care decisions does not
5 agree with the decision reached during the review process under
6 Subsection (b), the attending physician or another physician
7 responsible for the care of the patient shall perform on the patient
8 each medical procedure that satisfies the following conditions:

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

12 (2) based on the physician's discussion with the
13 facility, performing the medical procedure will increase the
14 likelihood of effecting the patient's transfer under Subsection (d)
15 to a health care facility that is willing to consider accepting or
16 able to accept the patient;

17 (3) in the physician's medical judgment, performing
18 the medical procedure is:

19 (A) within the prevailing standard of medical
20 care; and

21 (B) not medically contraindicated or medically
22 inappropriate under the circumstances;

23 (4) the physician has the training and experience to
24 perform the medical procedure;

25 (5) if the patient is receiving care in a health care
26 facility, the physician has been granted privileges by the facility
27 that authorize the physician to perform the medical procedure at

1 the facility;

2 (6) the health care facility at which the medical
3 procedure will be performed has the resources for the performance
4 of the procedure; and

5 (7) the person responsible for the health care
6 decisions of the patient provides consent on behalf of the patient
7 for the medical procedure.

8 (e) If the patient's advance directive [~~patient~~] or the
9 person responsible for the health care decisions of the patient is
10 requesting life-sustaining treatment that the attending physician
11 has decided and the ethics or medical committee has affirmed is
12 medically inappropriate treatment, the patient shall be given
13 available life-sustaining treatment pending transfer under
14 Subsection (d). This subsection does not authorize withholding or
15 withdrawing pain management medication, medical procedures
16 necessary to provide comfort, or any other health care provided to
17 alleviate a patient's pain. The patient is responsible for any
18 costs incurred in transferring the patient to another
19 facility. The attending physician, any other physician
20 responsible for the care of the patient, and the health care
21 facility are not obligated to provide life-sustaining treatment
22 after the 21st business [~~10th~~] day after both the written decision
23 and the patient's medical record required under Subsection (b) are
24 provided to [~~the patient or~~] the person responsible for the health
25 care decisions of the patient unless ordered to extend the time [~~to~~
26 ~~so~~] 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 the provision of
7 the treatment;

8 (3) result in substantial irremediable physical pain
9 not outweighed by the benefit of the provision of the treatment;

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

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

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

22 SECTION 3. Subchapter B, Chapter 166, Health and Safety
23 Code, is amended by adding Section 166.0465 to read as follows:

24 Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED
25 TO PATIENT DISABILITY. (a) In this section, "disability" has the
26 meaning assigned by the Americans with Disabilities Act of 1990 (42
27 U.S.C. Section 12101 et seq.).

1 the physician's judgment that the treatment would be medically
2 inappropriate, the case will be reviewed by an ethics or medical
3 committee. Life-sustaining treatment will be provided through the
4 review.

5 You will receive notification of this review at least seven
6 calendar days [~~48 hours~~] before a meeting of the committee related
7 to your case. You are entitled to attend the meeting. With your
8 agreement, the meeting may be held sooner than seven calendar days
9 [~~48 hours~~], if possible.

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

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

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

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

27 3. The patient will continue to be given life-sustaining

1 treatment until the patient can be transferred to a willing
2 provider for up to 21 business [~~10~~] days from the time you were
3 given both the committee's written decision that life-sustaining
4 treatment is not appropriate and the patient's medical record. The
5 patient will continue to be given after that [~~the 10-day~~] period
6 treatment to enhance pain management and reduce suffering,
7 including artificially administered nutrition and hydration,
8 unless, based on reasonable medical judgment, providing
9 artificially administered nutrition and hydration would hasten the
10 patient's death, be medically contraindicated such that the
11 provision of the treatment seriously exacerbates life-threatening
12 medical problems not outweighed by the benefit of the provision of
13 the treatment, result in substantial irremediable physical pain not
14 outweighed by the benefit of the provision of the treatment, be
15 medically ineffective in prolonging life, or be contrary to the
16 patient's or 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 21 business [~~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 that [~~the 10-day~~] period if the court finds that there is a
25 reasonable expectation that you may find a physician or health care
26 facility willing to provide life-sustaining treatment if the
27 extension is granted. Patient medical records will be provided to

1 process for resolving disagreements about treatment among
2 patients, families, and physicians. It is based upon Section
3 166.046 of the Texas Advance Directives Act, codified in Chapter
4 166, Texas Health and Safety Code.

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

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

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

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

22 1. The physician, with the help of the health care facility,
23 will assist you in trying to find a physician and facility willing
24 to withdraw or withhold the life-sustaining treatment.

25 2. You are being given a list of health care providers,
26 licensed physicians, health care facilities, and referral groups
27 that have volunteered their readiness to consider accepting

1 transfer, or to assist in locating a provider willing to accept
2 transfer, maintained by the Department of State Health
3 Services. You may wish to contact providers, facilities, or
4 referral groups on the list or others of your choice to get help in
5 arranging a transfer.

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

16 SECTION 5. Subchapter B, Chapter 166, Health and Safety
17 Code, is amended by adding Section 166.054 to read as follows:

18 Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR
19 MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day
20 after the date written notice is provided under Section
21 166.046(b)(1), a health care facility shall prepare and submit to
22 the department a report that contains information on:

23 (1) the number of days that elapsed from the patient's
24 admission to the facility to the date notice was provided under
25 Section 166.046(b)(1);

26 (2) whether the ethics or medical committee met to
27 review the case under Section 166.046 and, if the committee did

1 meet, the number of days that elapsed from the date notice was
2 provided under Section 166.046(b)(1) to the date the meeting was
3 held;

4 (3) whether the patient was:

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

9 (B) transferred to a different facility; or

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

12 (4) whether the patient died while receiving
13 life-sustaining treatment;

14 (5) whether life-sustaining treatment was withheld or
15 withdrawn from the patient after expiration of the time described
16 by Section 166.046(e);

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

19 (A) 17 years of age or younger;

20 (B) 18 years of age or older and younger than 66
21 years of age; or

22 (C) 66 years of age or older;

23 (7) the health insurance coverage status of the
24 patient selected from the following categories:

25 (A) private health insurance coverage;

26 (B) public health plan coverage; or

27 (C) uninsured;

1 (8) the patient's sex; and

2 (9) the patient's race.

3 (b) The department 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 department
8 shall prepare and publish on the department's Internet website a
9 report that contains:

10 (1) aggregate information compiled from the reports
11 submitted to the department 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); and

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

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

5 (A) sex;

6 (B) race;

7 (C) age group, based on the categories described
8 by Subsection (a)(6); and

9 (D) health insurance coverage status, based on
10 the categories described by Subsection (a)(7).

11 (d) If the department receives fewer than 10 reports under
12 Subsection (a) for inclusion in an annual report required under
13 Subsection (c), the department shall include in the next annual
14 report prepared after the department receives 10 or more reports
15 the aggregate information for all years for which the information
16 was not included in a preceding annual report. The department shall
17 include in the next annual report a statement that identifies each
18 year during which an underlying report was submitted to the
19 department under Subsection (a).

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

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

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

27 (2) protect and aggregate any information the

1 department receives under this section.

2 (g) Information submitted to the department under this
3 section:

4 (1) is not admissible in a civil or criminal
5 proceeding in which a physician, health care professional acting
6 under the direction of a physician, or health care facility is a
7 defendant;

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

12 (3) is not public information or subject to disclosure
13 under Chapter 552, Government Code.

14 SECTION 6. Section 166.202(a), Health and Safety Code, is
15 amended to read as follows:

16 (a) This subchapter applies to a DNR order issued for a
17 patient admitted to [in] a health care facility or hospital.

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

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

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

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

27 (B) the oral directions of a competent patient

1 delivered to or observed by two competent adult witnesses, at least
2 one of whom must be a person not listed under Section 166.003(2)(E)
3 or (F);

4 (C) the directions in an advance directive
5 enforceable under Section 166.005 or executed in accordance with
6 Section 166.032, 166.034, ~~[or]~~ 166.035, 166.082, 166.084, or
7 166.085;

8 (D) the directions of a patient's:
9 (i) legal guardian;
10 (ii) ~~[or]~~ agent under a medical power of
11 attorney acting in accordance with Subchapter D; or
12 (iii) proxy as designated and authorized by
13 a directive executed in accordance with Subchapter B to make a
14 treatment decision for the patient if the patient becomes
15 incompetent or otherwise mentally or physically incapable of
16 communication; or

17 (E) a treatment decision made in accordance with
18 Section 166.039; or

19 (2) is issued by the patient's attending physician
20 and:

21 (A) the order is not contrary to the directions
22 of a patient who was competent at the time the patient conveyed the
23 directions; and

24 (B) [7] in the reasonable medical judgment of the
25 patient's attending physician:

26 (i) ~~[(A)]~~ the patient's death is imminent,
27 regardless of the provision of cardiopulmonary resuscitation; and

1 (ii) [~~(B)~~] the DNR order is medically
2 appropriate.

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

8 (c) Unless notice is provided in accordance with Section
9 166.204(a-1), before [~~Before~~] placing in a patient's medical record
10 a DNR order issued under Subsection (a)(2), a [~~the~~] physician,
11 physician assistant, nurse, or other person acting on behalf of a
12 health care facility or hospital shall:

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

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

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

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

22 SECTION 8. Section 166.204, Health and Safety Code, is
23 amended by amending Subsection (a) and adding Subsection (a-1) to
24 read as follows:

25 (a) If a physician issues a DNR order under Section
26 166.203(a)(2), a physician, a physician assistant, a nurse, or
27 another person acting on behalf of a health care facility or

1 hospital shall provide notice of the order to the appropriate
2 persons in accordance with Subsection (a-1) or Section 166.203(c).

3 (a-1) If an individual arrives at a health care facility or
4 hospital that is treating a patient for whom a DNR order is issued
5 under Section 166.203(a)(2) and the individual notifies a
6 physician, physician assistant, or nurse providing direct care to
7 the patient of the individual's arrival, the physician, physician
8 assistant, or nurse who has actual knowledge of the order shall,
9 unless notice has been provided in accordance with Section
10 166.203(c), disclose the order to the individual, provided the
11 individual is:

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

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

17 SECTION 9. Sections 166.205(a) and (b), Health and Safety
18 Code, are amended to read as follows:

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

24 (1) the advance directive that serves as the basis of
25 the DNR order is properly revoked in accordance with this
26 chapter; [~~effectively revokes an advance directive, in accordance~~
27 ~~with Section 166.042, for which a DNR order is issued under Section~~

1 ~~166.203(a); or]~~

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

5 (3) the DNR order was issued under Section
6 166.203(a)(1)(D) or (E) or Section 166.203(a)(2), and the person
7 responsible for making health care or treatment decisions on behalf
8 of the patient expresses to any person providing direct care to the
9 patient a revocation of consent to or intent to revoke the DNR
10 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 SECTION 10. Sections 166.206(a) and (b), Health and Safety
16 Code, are amended to read as follows:

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

25 (b) If, after receiving notice under Subsection (a), the
26 patient or another person authorized to act on behalf of the patient
27 and the [~~attending~~] physician, health care facility, or hospital

1 remain in disagreement, the physician, facility, or hospital shall
2 make a reasonable effort to transfer the patient to another
3 physician, facility, or hospital willing to execute or comply with
4 a DNR order or the patient's instructions concerning the provision
5 of cardiopulmonary resuscitation.

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

8 Sec. 166.209. ENFORCEMENT. (a) Subject to Sections
9 166.205(d), 166.207, and 166.208 and Subsection (c), a [A]
10 physician, physician assistant, nurse, or other person commits an
11 offense if, with the specific intent to violate this subchapter,
12 the person:

13 (1) [intentionally] ~~intentionally~~ conceals, cancels, effectuates,
14 or falsifies another person's DNR order in violation of this
15 subchapter; or

16 (2) [if the person intentionally] ~~if the person intentionally~~ conceals or
17 withholds personal knowledge of another person's revocation of a
18 DNR order in violation of this subchapter.

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

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

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

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

3 (c) A person does not commit an offense under Subsection (a)
4 if the person's act or omission was based on a reasonable belief
5 that the act or omission was in compliance with the wishes of the
6 patient or the person having authority to make health care
7 treatment decisions on behalf of the patient.

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

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

22 (1) the patient's spouse;

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

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

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

5 (a-1) If the patient does not have a legal guardian, an
6 agent under a medical power of attorney, or a person listed in
7 Subsection (a) who is reasonably available, a treatment decision
8 may be concurred by another physician who is not involved in the
9 treatment of the patient.

10 (c) Any medical treatment consented to under Subsection (a)
11 or (a-1) must be based on knowledge of what the patient would
12 desire, if known.

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

22 SECTION 14. Section 166.209, Health and Safety Code, as
23 amended by this Act, applies only to conduct that occurs on or after
24 the effective date of this Act. Conduct that occurs before the
25 effective date of this Act is governed by the law in effect on the
26 date the conduct occurred, and the former law is continued in effect
27 for that purpose.

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