

AN ACT

relating to certain advance directives for medical treatment and medical treatment decisions.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by amending Subdivision (7) and adding Subdivision (15) to read as follows:

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(15) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

SECTION 2. Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.010 to read as follows:

Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

SECTION 3. The heading to Section 166.046, Health and Safety Code, is amended to read as follows:

1 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR
2 TREATMENT DECISION.

3 SECTION 4. Section 166.046, Health And Safety Code, is
4 amended by amending Subsections (a), (b), and (e) and adding
5 Subsection (e-1) to read as follows:

6 (a) If an attending physician refuses to honor a patient's
7 advance directive or a health care or treatment decision made by or
8 on behalf of a patient [~~under Section 166.039~~], the physician's
9 refusal shall be reviewed by an ethics or medical committee. The
10 attending physician may not be a member of that committee. The
11 patient shall be given life-sustaining treatment during the review.

12 (b) The patient or the person responsible for the health
13 care decisions of the individual who has made the decision
14 regarding the directive or treatment decision:

15 (1) may be given a written description of the ethics or
16 medical committee review process and any other policies and
17 procedures related to this section adopted by the health care
18 facility;

19 (2) shall be informed of the committee review process
20 not less than 48 hours before the meeting called to discuss the
21 patient's directive, unless the time period is waived by mutual
22 agreement; [~~and~~]

23 (3) at the time of being so informed, shall be
24 provided:

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

27 (B) a copy of the registry list of health care

1 providers and referral groups that have volunteered their readiness
2 to consider accepting transfer or to assist in locating a provider
3 willing to accept transfer that is posted on the website maintained
4 by the Texas Health Care Information Council under Section 166.053;
5 and

6 (4) [~~2~~] is entitled to:

7 (A) attend the meeting; and

8 (B) receive a written explanation of the decision
9 reached during the review process.

10 (e) If the patient or the person responsible for the health
11 care decisions of the patient is requesting life-sustaining
12 treatment that the attending physician has decided and the review
13 process has affirmed [~~have decided~~] is inappropriate treatment, the
14 patient shall be given available life-sustaining treatment pending
15 transfer under Subsection (d). The patient is responsible for any
16 costs incurred in transferring the patient to another facility.
17 The physician and the health care facility are not obligated to
18 provide life-sustaining treatment after the 10th day after the
19 written decision required under Subsection (b) is provided to the
20 patient or the person responsible for the health care decisions of
21 the patient unless ordered to do so under Subsection (g).

22 (e-1) If during a previous admission to a facility a
23 patient's attending physician and the review process under
24 Subsection (b) have determined that life-sustaining treatment is
25 inappropriate, and the patient is readmitted to the same facility
26 within six months from the date of the decision reached during the
27 review process conducted upon the previous admission, Subsections

1 (b) through (e) need not be followed if the patient's attending
2 physician and a consulting physician who is a member of the ethics
3 or medical committee of the facility document on the patient's
4 readmission that the patient's condition either has not improved or
5 has deteriorated since the review process was conducted.

6 SECTION 5. Subchapter B, Chapter 166, Health and Safety
7 Code, is amended by adding Sections 166.052 and 166.053 to read as
8 follows:

9 Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO
10 TRANSFER. (a) In cases in which the attending physician refuses
11 to honor an advance directive or treatment decision requesting the
12 provision of life-sustaining treatment, the statement required by
13 Section 166.046(b)(2)(A) shall be in substantially the following
14 form:

15 When There Is A Disagreement About Medical Treatment: The Physician
16 Recommends Against Life-Sustaining Treatment That You Wish To
17 Continue

18 You have been given this information because you have
19 requested life-sustaining treatment,* which the attending
20 physician believes is not appropriate. This information is being
21 provided to help you understand state law, your rights, and the
22 resources available to you in such circumstances. It outlines the
23 process for resolving disagreements about treatment among
24 patients, families, and physicians. It is based upon Section
25 166.046 of the Texas Advance Directives Act, codified in Chapter
26 166 of the Texas Health and Safety Code.

27 When an attending physician refuses to comply with an advance

1 directive or other request for life-sustaining treatment because of
2 the physician's judgment that the treatment would be inappropriate,
3 the case will be reviewed by an ethics or medical committee.
4 Life-sustaining treatment will be provided through the review.

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

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

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

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

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

25 3. The patient will continue to be given life-sustaining
26 treatment until he or she can be transferred to a willing provider
27 for up to 10 days from the time you were given the committee's

1 written decision that life-sustaining treatment is not
2 appropriate.

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

5 5. If a provider cannot be found willing to give the
6 requested treatment within 10 days, life-sustaining treatment may
7 be withdrawn unless a court of law has granted an extension.

8 6. You may ask the appropriate district or county court to
9 extend the 10-day period if the court finds that there is a
10 reasonable expectation that a physician or health care facility
11 willing to provide life-sustaining treatment will be found if the
12 extension is granted.

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

23 (b) In cases in which the attending physician refuses to
24 comply with an advance directive or treatment decision requesting
25 the withholding or withdrawal of life-sustaining treatment, the
26 statement required by Section 166.046(b)(3)(A) shall be in
27 substantially the following form:

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

3 You have been given this information because you have
4 requested the withdrawal or withholding of life-sustaining
5 treatment* and the attending physician refuses to comply with that
6 request. The information is being provided to help you understand
7 state law, your rights, and the resources available to you in such
8 circumstances. It outlines the process for resolving disagreements
9 about treatment among patients, families, and physicians. It is
10 based upon Section 166.046 of the Texas Advance Directives Act,
11 codified in Chapter 166 of the Texas Health and Safety Code.

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

17 You will receive notification of this review at least 48
18 hours before a meeting of the committee related to your case. You
19 are entitled to attend the meeting. With your agreement, the
20 meeting may be held sooner than 48 hours, if possible.

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

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

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

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

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

21 (c) An attending physician or health care facility may, if
22 it chooses, include any additional information concerning the
23 physician's or facility's policy, perspective, experience, or
24 review procedure.

25 Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The Texas
26 Health Care Information Council shall maintain a registry listing
27 the identity of and contact information for health care providers

1 and referral groups, situated inside and outside this state, that
2 have voluntarily notified the council they may consider accepting
3 or may assist in locating a provider willing to accept transfer of a
4 patient under Section 166.045 or 166.046.

5 (b) The listing of a provider or referral group in the
6 registry described in this section does not obligate the provider
7 or group to accept transfer of or provide services to any particular
8 patient.

9 (c) The Texas Health Care Information Council shall post the
10 current registry list on its website in a form appropriate for easy
11 comprehension by patients and persons responsible for the health
12 care decisions of patients and shall provide a clearly identifiable
13 link from its home page to the registry page. The list shall
14 separately indicate those providers and groups that have indicated
15 their interest in assisting the transfer of:

16 (1) those patients on whose behalf life-sustaining
17 treatment is being sought;

18 (2) those patients on whose behalf the withholding or
19 withdrawal of life-sustaining treatment is being sought; and

20 (3) patients described in both Subdivisions (1) and
21 (2).

22 (d) The registry list described in this section shall
23 include the following disclaimer:

24 "This registry lists providers and groups
25 that have indicated to the Texas Health Care
26 Information Council their interest in
27 assisting the transfer of patients in the

1 circumstances described, and is provided
2 for information purposes only. Neither the
3 Texas Health Care Information Council nor
4 the State of Texas endorses or assumes any
5 responsibility for any representation,
6 claim, or act of the listed providers or
7 groups."

8 SECTION 6. Section 166.085, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON
11 BEHALF OF A MINOR. (a) The following persons may execute an
12 out-of-hospital DNR order on behalf of a minor:

- 13 (1) the minor's parents;
14 (2) the minor's legal guardian; or
15 (3) the minor's managing conservator.

16 (b) A person listed under Subsection (a) may not execute an
17 out-of-hospital DNR order unless the minor has been diagnosed by a
18 physician as suffering from a terminal or irreversible condition.

19 SECTION 7. Subchapter C, Chapter 166, Health and Safety
20 Code, is amended by adding Section 166.102 to read as follows:

21 Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY
22 HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES
23 PERSONNEL. (a) Except as provided by Subsection (b), a licensed
24 nurse or person providing health care services in an
25 out-of-hospital setting may honor a physician's do-not-resuscitate
26 order.

27 (b) When responding to a call for assistance, emergency

1 medical services personnel shall honor only a properly executed or
2 issued out-of-hospital DNR order or prescribed DNR identification
3 device in accordance with this subchapter.

4 SECTION 8. Subdivision (1), Section 166.081, Health and
5 Safety Code, is repealed.

6 SECTION 9. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1320 passed the Senate on May 8, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on June 1, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1320 passed the House, with amendments, on May 28, 2003, by the following vote: Yeas 141, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor