

BILL ANALYSIS

C.S.S.B. 439
By: Deuell
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Advance Directives Act, enacted during the 76th Legislative Session, describes certain provisions that are now Chapter 166 of the Texas Health & Safety Code. It established an orderly process to resolve disputes involving end-of-life decisions and treatment plans regarding patients, family members, and health care providers. However, the Texas Advance Directives Act has since seen calls for revision of provisions regarding the procedures followed when the continuation of life-sustaining treatment is considered medically inappropriate by the attending physician.

CSSB 439 revises the current Texas Advance Directives Act.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of State Health Services in SECTION 7 of this bill.

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 10 of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 10 of this bill.

ANALYSIS

SECTION 1. Amends Section 166.002, Health and Safety Code, by amending Subdivisions (6) and adding Subdivision (16) to read as follows:

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033 or a subcommittee of an ethics or medical committee.

(16) "Surrogate" means a legal guardian, an agent under a medical power of attorney, or a person authorized under Section 166.039(b) to make a health care decision or treatment decision for an incompetent patient under this chapter. The bill replaces "the patient, or the person responsible for the health care decisions of the individual" with the term "surrogate" throughout the bill and makes conforming changes.

SECTION 2. Amends Subsection (e), Section 166.039, Health and Safety Code, to read as follows:

(e) Provides that if the patient does not have a legal guardian or agent under a medical power of attorney and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be concurred with by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

SECTION 3. Amends Subsection (c), Section 166.045, Health and Safety Code, to read as follows:

(c) Provides that if an attending physician disagrees with a health care or treatment decision of a surrogate made on behalf of an incompetent patient who has been diagnosed with a terminal condition that has been certified in writing by the attending physician, and the attending physician (rather than refuses to comply with a directive or treatment decisions and, as in existing law) does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the health care or treatment decision, (rather than directive as in existing law).

SECTION 4. Amends Section 166.046, Health and Safety Code, to read as follows:
Sec. 166.046.

PROCEDURE IF PHYSICIAN DISAGREES WITH HEALTH CARE OR TREATMENT DECISION. (Rather than PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR TREATMENT DECISION as in existing law)

(a) If an attending physician disagrees with the health care or treatment decision of a surrogate made on behalf of an incompetent patient who has been diagnosed with a terminal condition that has been certified in writing by the attending physician, or permanently requires an intensive care unit and according to reasonable medical judgment one or more of the following therapies in order to keep the patient alive for more than six months without which the patient would die: mechanical ventilation, dialysis, blood pressure maintenance drugs, or blood pressure maintenance devices, the attending physician shall request a consultation with an ethics or medical committee under Subsection (a-1). Deletes text providing that if an attending physician "refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal shall be reviewed by" an ethics or medical committee. Deletes provision that the attending physician may not be a member of that committee. Requires the patient to be given life-sustaining treatment during the process described by this section, (rather than review as in existing law). Provides that if artificial nutrition and hydration are the only life-sustaining treatment being provided to a patient with a terminal condition, the process established under this section may not be invoked unless reasonable medical evidence indicates the provision of artificial nutrition and hydration may hasten the patient's death or seriously exacerbate other major medical problems and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration.

(a-1) Provides that if an attending physician requests a consultation with an ethics or medical committee, the ethics or medical committee shall

- (1) appoint a patient liaison familiar with end-of-life issues and hospice care options to assist the patient's surrogate throughout the process described by this section; and
- (2) appoint one or more representatives of the ethics or medical committee to conduct an advisory ethics consultation with the surrogate, which must be documented in the patient's medical record.

(a-2) Provides that if a disagreement over a health care or treatment decision persists following an advisory ethics consultation described in Subsection (a-1)(2), the attending physician may request a meeting with the ethics or medical committee and shall advise the surrogate that the attending physician will initiate the review process and present medical facts at the meeting described in Subsection (b). The attending physician may not participate as a member of the ethics or medical committee in the case being evaluated.

(b) Provides that on receipt of a request for a meeting of the ethics or medical committee as described in Subsection (a-2):

- (1) Requires the surrogate, not later than the seventh calendar day before the date of the meeting requested under Subsection (a-2), unless the time period is waived by mutual agreement, to:

- (A) be offered a written description of the ethics or medical committee review process and may be offered any other policies and procedures related to this section adopted by the health care facility;
- (B) be provided information that the surrogate is entitled to receive the continued assistance of a patient liaison to assist the surrogate throughout the process described in this section;
- (C) be provided information that the surrogate may seek a second opinion from other medical professionals regarding the patient's medical status and treatment requirements and communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting;
- (D) be provided a copy of the appropriate statement set forth in Section 166.052; and
- (E) be provided a copy of the registry list of health care providers, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the Texas Department of State Health Services (department) under Section 166.053; and

- (2) if requested in writing by the surrogate, the surrogate is entitled to receive:
 - (A) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with requested diagnostic results and reports reasonably requested by the surrogate; and
 - (B) not later than the fifth calendar day after the date of the request, a free copy of the remainder of the patient's medical record, if any, related to the current admission to the facility.

Deletes language that provided that "the patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision may be given" a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility; "shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement; at the time of being so informed, shall" be provided a copy of the appropriate statement set forth in Section 166.052. Replaces reference to the Texas Health Care Information Council with the department.

- (b-1) Provides that the surrogate is entitled to:
 - (1) attend and participate in the meeting, excluding the committee's deliberations;
 - (2) be accompanied at the meeting at the surrogate's discretion by five or more persons for support, subject to the hospital's reasonable written attendance policy as necessary to facilitate information sharing and discussion of the patient's medical status and treatment requirements; and preserve the order and decorum of the meeting; and
 - (3) receive a written explanation of the decision reached during the review process.

(c) Provides that the written explanation required by Subsection (b-1)(3) must be included in the patient's medical record. Makes conforming changes.

(d) Provides that if the attending physician or the surrogate does not agree with the decision reached during the review process, the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the surrogate's health care or treatment decision, (rather than directive as in existing law). Requires the facility's personnel to assist the physician in arranging the patient's transfer to another physician, an alternative care setting within that facility, or another facility, and deletes "if the patient is a patient in a health care facility." Deletes reference to "under Subsection (b)" and makes conforming changes.

(e) Provides that if the surrogate is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee, (rather than review process as in existing law) has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient shall receive treatment to enhance pain relief and minimize suffering, which must include the provision of artificial nutrition and hydration unless providing the artificial nutrition and hydration would hasten death or seriously exacerbate other major medical conditions and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration. The patient is responsible for any costs incurred in transferring the patient to another facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment, except for the provision of artificial nutrition and hydration, unless providing the artificial nutrition and hydration would hasten death or seriously exacerbate other major medical conditions and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration, after the 21st calendar, (rather than 10th as in existing law), day after the written decision required under Subsection (b) is provided to the surrogate, unless ordered to do so under Subsection (g). Makes conforming changes.

(e-1) Provides that if during a previous admission to a facility a patient's attending physician and the review process have determined that life-sustaining treatment is medically inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted. Deletes references to "under Subsection b."

(f) Provides that if life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) and Section 166.0465, if applicable, has expired.

(g) At the request of the patient or the surrogate, the appropriate district or county court shall extend the time period provided under Subsection (e) only if the court in a proceeding conducted under Section 166.0465 finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the surrogate's health care or treatment decision, (rather than patient's directive as in existing law), will be found if the time extension is granted. Makes conforming changes.

(h) Makes no changes to the subsection.

SECTION 5. Amends Subchapter B, Chapter 166, Health and Safety Code, by adding Section 166.0465 to read as follows:

Sec. 166.0465. COURT ORDER FOR LIFE-SUSTAINING TREATMENT; APPEAL; FILING FEE AND COURT COSTS.

(a) Authorizes a patient's surrogate to submit a motion for extension of time to effect a patient transfer for relief under Section 166.046(g) in any county court at law, court having probate jurisdiction, or district court, including a family district court and immediately serve a copy on the health care facility.

(b) Requires the court to set a time for a hearing on a motion filed under Subsection (a) and shall keep a record of all testimony and other oral proceedings in the action. Requires the court to rule on the motion and issue written findings of fact and conclusions of law not later than the fifth business day after the date the motion is filed with the court. The time for the hearing and the date by which the court must rule on the motion may be extended by stipulation of the parties, with the approval of the court.

(c) Provides that any party may appeal the decision of the court under Subsection (b) to the court of appeals having jurisdiction over civil matters in the county in which the motion was filed by filing a notice of appeal with the clerk of the court that ruled on the motion not later than the first business day after the day on which the decision of the court was issued.

(d) Provides that on receipt of a notice of appeal under Subsection (c), the clerk of the court that ruled on the motion shall deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. On receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court, and the court of appeals shall promptly issue an expedited briefing schedule and set a time for a hearing.

(e) Requires the court of appeals to rule on an appeal under Subsection (d) not later than the fifth business day after the date the notice of appeal is filed with the court that ruled on the motion. The times for the filing of briefs, the hearing, and the date by which the court of appeals must rule on the appeal may be extended by stipulation of the parties, with the approval of the court of appeals.

(f) Authorizes any party to file a petition for review of the decision of the court of appeals with the clerk of the supreme court not later than the third business day after the day on which the decision of the court of appeals was issued. Other parties may file responses not later than the third business day after the day on which the petition for review was filed. Requires the supreme court to grant the petition, deny it, refuse it, or dismiss it for want of jurisdiction, whether or not a reply to any response has been filed, not later than the third business day after the day on which the response was due. If the supreme court grants the petition for review, it shall exercise its sound discretion in determining how expeditiously to hear and decide the case.

(g) Provides that if a motion is filed under Subsection (a), life-sustaining treatment shall be provided through midnight of the day by which a notice of appeal must be filed unless the court directs that it be provided for a longer period. If a notice of appeal under Subsection (c) is filed, life-sustaining treatment shall be provided through midnight of the day by which a petition for review to the supreme court must be filed, unless the court of appeals directs that it be provided for a longer period. If a petition for review to the supreme court is filed under Subsection (f), life-sustaining treatment shall be provided through midnight of the day on which the supreme court denies, refuses, or dismisses the petition or issues a ruling on the merits, unless the supreme court directs that it be provided for a longer period.

(h) Provides that a filing fee or court cost may not be assessed for any proceeding in a trial or appellate court under this section.

SECTION 6. Amends Subsections (a) and (b), Section 166.052, Health and Safety Code, to read as follows:

(a) Provides that in cases in which the attending physician disagrees with, (rather than refuses to honor an advance directive or as in existing law), a treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(1)(D) shall be in substantially the following form: (deletes a reference to 166.046(b)(2)(A))

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

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

When an attending physician disagrees with, (rather than refuses to comply with an advance directive or other as in existing law), a request for life-sustaining treatment because of the physician's medical judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review. As the patient's decision-maker, you will receive notification of this review at least seven calendar days, (rather than 48 hours as in existing law), before a meeting of the committee related to your case. (Deletes language providing that "you are entitled to attend the meeting"). With your agreement, the meeting may be held sooner than seven calendar days, (rather than 48 hours as in existing law), if possible. The committee will appoint a patient liaison to assist you through this process. You are entitled to attend the meeting, address the committee, and be accompanied by five or more persons, at your discretion, to support you, subject to the hospital's reasonable written attendance policy to facilitate information sharing and discussion of the patient's medical status and treatment requirements and preserve the order and decorum of the meeting. On written request, you are also entitled to receive:

- (1) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the patient's current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with requested diagnostic results and reports reasonably requested by you on behalf of the patient; and
- (2) not later than the fifth calendar day following the request, a free copy of the remainder of the patient's medical record, if any, related to the current admission to the facility.

You are free to seek a second opinion from other medical professionals regarding the patient's medical status and treatment requirements and communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting. You are entitled to receive a written explanation of the decision reached during the review process. If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is medically inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.
2. You are being given a list of health care providers, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services, (rather than the Texas Health Care Information Council as in existing law). You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.
3. The patient will continue to be given life-sustaining treatment and treatment to enhance pain management and reduce suffering, including artificial nutrition and hydration, unless providing the artificial nutrition and hydration would hasten death or seriously exacerbate other major medical conditions and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration, until the patient (rather than he or she as in existing law) can be transferred to a willing provider for up to 21 calendar (rather than 10 as in existing law) days from the time you were given the committee's written decision that life-sustaining treatment is not medically appropriate.
4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.
5. If a provider cannot be found willing to give the requested treatment within 21 calendar (rather than 10 as in existing law) days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 21-day (rather than 10-day as in existing law) period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted.

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

(b) In cases in which the attending physician disagrees with a health care (rather than refuses to comply with an advance directive as in existing law) or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(1)(D) (deletes reference to 166.046(b)(3)(A)) shall be in substantially the following form:

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

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment* on behalf of the patient and the attending physician disagrees (rather than refuses to comply as in existing law) with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician disagrees (rather than refuses to comply as in existing law) with a (rather than an advance directive or other as in existing law) request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review. As the patient's decision-maker, you will receive notification of this review at least seven calendar days (rather than 48 hours as in existing law) before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days (rather than 48 hours as in existing law), if possible. You will be appointed a patient liaison familiar with end-of-life issues and hospice care options to assist you throughout this process. A representative of the ethics or medical committee will also conduct an advisory consultation with you. On written request you are entitled to receive:

- (1) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with requested diagnostic results and reports reasonably requested by you on behalf of the patient; and
- (2) not later than the fifth calendar day following the date of the request, a free copy of the remainder of the patient's medical record, if any, related to the current admission to the facility.

You are free to seek a second opinion from other medical professionals regarding the patient's medical status and treatment requests and communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting. You are entitled to receive a written explanation of the decision reached during the review process. If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still disagrees (rather than refuses to comply as in existing law) with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

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

2. You are being given a list of health care providers, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services (rather than Texas Health Care Information Council as in existing law). You may wish to contact providers or referral groups on the list or others of your choice to get help in arranging a transfer.

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

SECTION 7. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.054 to read as follows:

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESSES OF DATA. (a) Provides that on submission of a health care facility's application to renew its license, a facility in which one or more meetings of an ethics or medical committee is held shall file a report with the department that contains aggregate information regarding the number of cases considered by an ethics or medical committee under Section 166.046(a-2) and the disposition of those cases by the facility.

(b) Provides that aggregate data submitted to the department under this section may include only the following:

- (1) the total number of patients for whom the Section 166.046(b) review process was initiated;
- (2) the number of patients under Subdivision (1) who were transferred to: another physician within the same facility; or a different facility;
- (3) the number of patients under Subdivision (1) who were discharged to home;
- (4) the number of patients under Subdivision (1) for whom treatment was withheld or withdrawn pursuant to surrogate consent: before the Section 166.046(b) review consultation; after the Section 166.046(b) review consultation; or during or after the 21-day period described by Section 166.046(e);
- (5) the number of patients under Subdivision (1) for whom treatment was withheld or withdrawn without surrogate consent: before expiration of the 21-day period; or after expiration of the 21-day period;
- (6) the number of patients under Subdivision (1) who died while still receiving life-sustaining treatment: before the Section 166.046(b) review consultation; during the 21-day period; or during extension of the 21-day period, if any; and
- (7) the average length of stay before a Section 166.046(b) review consultation.

(c) Provides that the report required by this section may not contain any data specific to an individual patient.

(d) Requires the department to adopt rules to establish a standardized form for the reporting requirements of this section; and post on the department's Internet website the data submitted under Subsection (b) in the format provided by rule.

SECTION 8. Amends Subsections (a) and (c), Section 166.082, Health and Safety Code, to read as follows:

(a) A competent adult (rather than person as in existing law) may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-

hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B requesting that all treatment, other than treatment necessary for keeping the person comfortable, be discontinued or withheld, the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b).

SECTION 9. Amends Subsection (d), Section 166.152, Health and Safety Code, to read as follows:

(d) Requires the principal's attending physician to make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's health care decision (rather than advance directive as in existing law).

SECTION 10. (a) Not later than November 1, 2007, the Supreme Court of Texas shall issue the rules and prescribe the forms necessary for the process established by Section 166.0465, Health and Safety Code, as added by this Act. The rules shall prescribe the method of service of the application under Section 166.0465, Health and Safety Code, and may require filing and service of notices, petitions, and briefs electronically to the extent the Supreme Court of Texas considers appropriate.

(b) Not later than March 1, 2008, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act to Chapter 166, Health and Safety Code.

SECTION 11. This Act takes effect September 1, 2007.

The bill makes conforming changes and renumbers accordingly.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSSB 439 modifies the original by deleting the amendment to Section 166.002, Subdivision (13), Health and Safety Code, regarding the definition of the term "terminal condition."

CSSB 439 modifies the original by changing the provision relating to procedures if a physician disagrees with health care or treatment decisions. The original bill provided that if an attending physician disagrees with the health care or treatment decision of a surrogate made on behalf of an incompetent patient who has been diagnosed with a terminal condition that has been certified in writing by the attending physician, the attending physician shall request a consultation with an ethics or medical committee under Subsection (a-1). The substitute provides that if an attending physician disagrees with the health care or treatment decision of a surrogate made on behalf of an incompetent patient who has been diagnosed with a terminal condition that has been certified in writing by the attending physician, or permanently requires an intensive care unit and according to reasonable medical judgment one or more of the following therapies in order to keep the patient alive for more than six months without which the patient would die: mechanical ventilation, dialysis, blood pressure maintenance drugs, or blood pressure maintenance devices, the attending physician shall request a consultation with an ethics or medical committee under Subsection (a-1).