

By: Delisi

H.B. No. 3474

A BILL TO BE ENTITLED

AN ACT

relating to advance directives.

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 (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, agent under a medical power of attorney, or a person authorized under Section 166.039 to make a health care decision or treatment decision for an incompetent patient under this chapter.

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

(e) 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 in 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. Section 166.045(c), Health and Safety Code, is amended to read as follows:

1 (c) If an attending physician refuses to comply with a  
2 directive or treatment decision and does not wish to follow the  
3 procedure established under Section 166.046, the appropriate  
4 life-sustaining treatment shall be provided to the patient, but  
5 only until a reasonable opportunity has been afforded for the  
6 transfer of the patient to another physician or health care  
7 facility willing to comply with the directive or treatment  
8 decision.

9 SECTION 4. Section 166.046, Health and Safety Code, is  
10 amended to read as follows:

11 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR  
12 TREATMENT DECISION. (a) If an attending physician refuses to honor  
13 an incompetent, qualified [a] patient's advance directive or a  
14 health care or treatment decision made [by or] on behalf of an  
15 incompetent, qualified [a] patient, [the physician's refusal shall  
16 be reviewed by] an ethics or medical committee shall deliberate the  
17 physician's refusal in accordance with this section. [The  
18 attending physician may not be a member of that committee.] The  
19 patient shall be given life-sustaining treatment during the process  
20 described in this section [review].

21 (a-1) On receipt of notice of the refusal of an attending  
22 physician to honor an advance directive or health care or treatment  
23 decision described in Subsection (a) by an ethics or medical  
24 committee, the ethics or medical committee shall:

25 (1) appoint a patient liaison to assist the patient's  
26 surrogate throughout the process provided in this section; and

27 (2) appoint a representative of the ethics or medical

1 committee to conduct an advisory consultation with the surrogate,  
2 which must be documented in the patient's medical record.

3 (a-2) If a disagreement over a health care or treatment  
4 decision persists following an advisory consultation described in  
5 Subsection (a-1)(2), the attending physician may request a meeting  
6 with the ethics or medical committee and shall provide notice to the  
7 surrogate in accordance with Subsection (b). The attending  
8 physician may not be a member of the ethics or medical committee.

9 (b) On receipt of a request for a meeting of the ethics or  
10 medical committee as described in Subsection (a-2) and not less  
11 than 72 hours before the meeting with the committee to discuss the  
12 patient's directive or the surrogate's health care or treatment  
13 decision, unless the time period is waived by mutual agreement, the  
14 surrogate shall be offered ~~[The patient or the person responsible~~  
15 ~~for the health care decisions of the individual who has made the~~  
16 ~~decision regarding the directive or treatment decision]~~:

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

21 (2) information that the surrogate on request is  
22 entitled to receive in a timely manner a copy of the patient's  
23 medical record of the patient's current admission to the facility;

24 (3) information that the surrogate is entitled to  
25 receive the assistance of a patient liaison to assist the surrogate  
26 throughout the process described in this section;

27 (4) [shall be informed of the committee review process

1 ~~not less than 48 hours before the meeting called to discuss the~~  
2 ~~patient's directive, unless the time period is waived by mutual~~  
3 ~~agreement,~~

4 ~~[(3) at the time of being so informed, shall be~~  
5 ~~provided:~~

6 ~~[(A)]~~ a copy of the appropriate statement set  
7 forth in Section 166.052; and

8 (5) ~~[(B)]~~ a copy of the registry list of health care  
9 providers, health care facilities, and referral groups that have  
10 volunteered their readiness to consider accepting transfer or to  
11 assist in locating a provider willing to accept transfer that is  
12 posted on the website maintained by the department ~~[Texas Health~~  
13 ~~Care Information Council]~~ under Section 166.053.

14 (b-1) The surrogate ~~[, and~~

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

16 (1) ~~[(A)]~~ attend the meeting; ~~[and]~~

17 (2) be accompanied at the meeting by one or more  
18 persons for support, subject to the ability of the ethics or medical  
19 committee to accommodate the persons authorized and wishing to  
20 attend the meeting; and

21 (3) ~~[(B)]~~ receive a written explanation of the  
22 decision reached during the review process.

23 (c) The written explanation required by Subsection  
24 (b-1)(3) ~~[(b)(2)(B)]~~ must be included in the patient's medical  
25 record.

26 (d) If the attending physician or the surrogate ~~[, the~~  
27 ~~patient, or the person responsible for the health care decisions of~~

1 ~~the individual]~~ does not agree with the decision reached during the  
2 review process [~~under Subsection (b)~~], the physician shall make a  
3 reasonable effort to transfer the patient to a physician who is  
4 willing to comply with the directive or the surrogate's health care  
5 or treatment decision. ~~The~~ [~~If the patient is a patient in a health~~  
6 ~~care facility, the~~] facility's personnel shall assist the physician  
7 in arranging the patient's transfer to:

8 (1) another physician;

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

10 or

11 (3) another facility.

12 (e) If the patient's directive [~~patient~~] or the surrogate  
13 [~~person responsible for the health care decisions of the patient~~]  
14 is requesting life-sustaining treatment that the attending  
15 physician has decided and the ethics or medical committee [~~review~~  
16 ~~process~~] has affirmed is inappropriate treatment, the patient shall  
17 be given [~~available~~] life-sustaining treatment of at least the same  
18 level as was provided at the time the meeting with the ethics or  
19 medical committee was held under Subsection (a-2) pending transfer  
20 under Subsection (d). The patient shall receive treatment to  
21 enhance pain relief and minimize suffering. The patient is  
22 responsible for any costs incurred in transferring the patient to  
23 another facility. The attending physician, any other physician  
24 responsible for the care of the patient, and the health care  
25 facility are not obligated to provide life-sustaining treatment  
26 after the 11th business [~~10th~~] day after the written decision  
27 required under Subsection (b) is provided to the patient or the

1 surrogate [~~person responsible for the health care decisions of the~~  
2 ~~patient~~] unless ordered to do so under Subsection (g).

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

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

19 (g) At the request of the patient or the surrogate [~~person~~  
20 ~~responsible for the health care decisions of the patient~~], the  
21 appropriate district or county court shall extend the time period  
22 provided under Subsection (e) only if the court in a proceeding  
23 conducted under Section 166.0465 finds, by a preponderance of the  
24 evidence, that there is a reasonable expectation that a physician  
25 or health care facility that will honor the patient's directive  
26 will be found if the time extension is granted.

27 (h) This section may not be construed to impose an

1 obligation on a facility or a home and community support services  
2 agency licensed under Chapter 142 or similar organization that is  
3 beyond the scope of the services or resources of the facility or  
4 agency. This section does not apply to hospice services provided by  
5 a home and community support services agency licensed under Chapter  
6 142.

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

9 Sec. 166.0465. COURT ORDER FOR LIFE-SUSTAINING TREATMENT;  
10 APPEAL; FILING FEE AND COURT COSTS. (a) A patient or the patient's  
11 surrogate may submit a motion for extension of time to effect a  
12 patient transfer for relief under Section 166.046(g) in any county  
13 court at law, court having probate jurisdiction, or district court,  
14 including a family district court and immediately serve a copy on  
15 the health care facility.

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

24 (c) Any party may appeal the decision of the court under  
25 Subsection (b) to the court of appeals having jurisdiction over  
26 civil matters in the county in which the application was filed by  
27 filing a notice of appeal with the clerk of the court that ruled on

1 the application not later than the first business day after the day  
2 on which the decision of the court was issued.

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

10 (e) The court of appeals shall rule on an appeal under  
11 Subsection (d) not later than the fifth business day after the date  
12 the notice of appeal is filed with the court that ruled on the  
13 application. The times for the filing of briefs, the hearing, and  
14 the date by which the court of appeals must rule on the appeal may be  
15 extended by stipulation of the parties, with the approval of the  
16 court of appeals.

17 (f) Any party may file a petition for review of the decision  
18 of the court of appeals with the clerk of the supreme court not  
19 later than the third business day after the day on which the  
20 decision of the court of appeals was issued. Other parties may file  
21 responses not later than the third business day after the day on  
22 which the petition for review was filed. The supreme court shall  
23 grant the petition, deny it, refuse it, or dismiss it for want of  
24 jurisdiction, whether or not a reply to any response has been filed,  
25 not later than the third business day after the day on which the  
26 response was due. If the supreme court grants the petition for  
27 review, it shall exercise its sound discretion in determining how

1 expeditiously to hear and decide the case.

2 (g) If a motion is filed under Subsection (a),  
3 life-sustaining treatment shall be provided through midnight of the  
4 day by which a notice of appeal must be filed unless the court  
5 directs that it be provided for a longer period. If a notice of  
6 appeal under Subsection (c) is filed, life-sustaining treatment  
7 shall be provided through midnight of the day by which a petition  
8 for review to the supreme court must be filed, unless the court of  
9 appeals directs that it be provided for a longer period. If a  
10 petition for review to the supreme court is filed under Subsection  
11 (f), life-sustaining treatment shall be provided through midnight  
12 of the day on which the supreme court denies, refuses, or dismisses  
13 the petition or issues a ruling on the merits, unless the supreme  
14 court directs that it be provided for a longer period.

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

17 SECTION 6. Section 166.052(a), Health and Safety Code, is  
18 amended to read as follows:

19 (a) In cases in which the attending physician refuses to  
20 honor an advance directive or treatment decision requesting the  
21 provision of life-sustaining treatment, the statement required by  
22 Section 166.046(b)(4) [~~166.046(b)(2)(A)~~] shall be in substantially  
23 the following form:

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

27 You have been given this information because you have

1 requested life-sustaining treatment on behalf of the patient,\*  
2 which the attending physician believes is not appropriate. This  
3 information is being provided to help you understand state law,  
4 your rights, and the resources available to you in such  
5 circumstances. It outlines the process for resolving disagreements  
6 about treatment among patients, families, and physicians. It is  
7 based upon Section 166.046 of the Texas Advance Directives Act,  
8 codified in Chapter 166 of the Texas Health and Safety Code.

9 When an attending physician refuses to comply with an advance  
10 directive or other request for life-sustaining treatment because of  
11 the physician's judgment that the treatment would be inappropriate,  
12 the case will be reviewed by an ethics or medical committee.  
13 Life-sustaining treatment will be provided through the review.

14 As the patient's decision-maker, you [~~You~~] will receive  
15 notification of this review at least 72 [~~48~~] hours before a meeting  
16 of the committee related to your case. [~~You are entitled to attend~~  
17 ~~the meeting.~~] With your agreement, the meeting may be held sooner  
18 than 72 [~~48~~] hours, if possible.

19 The committee will appoint a patient liaison to assist you  
20 through this process. You are entitled to attend the meeting and to  
21 be accompanied by one or more persons to support you, subject to the  
22 ability of the committee to accommodate the persons authorized and  
23 wishing to attend. You are also entitled to receive a copy of the  
24 patient's medical record on request for the patient's current  
25 admission to this facility in a timely manner in advance of the  
26 meeting. You are entitled to receive a written explanation of the  
27 decision reached during the review process.

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

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

8           2. You are being given a list of health care providers,  
9 health care facilities, and referral groups that have volunteered  
10 their readiness to consider accepting transfer, or to assist in  
11 locating a provider willing to accept transfer, maintained by the  
12 Department of State [Texas] Health Services [Care Information  
13 Council]. You may wish to contact providers or referral groups on  
14 the list or others of your choice to get help in arranging a  
15 transfer.

16           3. The patient will continue to be given life-sustaining  
17 treatment and treatment to enhance pain management and reduce  
18 suffering until he or she can be transferred to a willing provider  
19 for up to 11 business [~~10~~] days from the time you were given the  
20 committee's written decision that life-sustaining treatment is not  
21 appropriate.

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

24           5. If a provider cannot be found willing to give the  
25 requested treatment within 11 business [~~10~~] days, life-sustaining  
26 treatment may be withdrawn unless a court of law has granted an  
27 extension.

1           6. You may ask the appropriate district or county court to  
2 extend the 11-day [~~10-day~~] period if the court finds that there is a  
3 reasonable expectation that a physician or health care facility  
4 willing to provide life-sustaining treatment will be found if the  
5 extension is granted.

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 artificial nutrition and hydration. The term does not include the  
12 administration of pain management medication or the performance of  
13 a medical procedure considered to be necessary to provide comfort  
14 care, or any other medical care provided to alleviate a patient's  
15 pain.

16           SECTION 7. 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 OF DATA. (a) On submission of a health  
20 care facility's application to renew its license, a facility in  
21 which one or more meetings of an ethics or medical committee is held  
22 under Section 166.046 shall file a report with the department that  
23 contains aggregate information regarding the number of cases  
24 considered by an ethics or medical committee and the disposition of  
25 those cases by the facility.

26           (b) The report required by this section may not contain any  
27 data specific to an individual patient.

1 SECTION 8. Sections 166.082(a) and (c), Health and Safety  
2 Code, are amended to read as follows:

3 (a) A competent adult [~~person~~] may at any time execute a  
4 written out-of-hospital DNR order directing health care  
5 professionals acting in an out-of-hospital setting to withhold  
6 cardiopulmonary resuscitation and certain other life-sustaining  
7 treatment designated by the board.

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

16 SECTION 9. Section 166.152(d), Health and Safety Code, is  
17 amended to read as follows:

18 (d) The principal's attending physician shall make  
19 reasonable efforts to inform the principal of any proposed  
20 treatment or of any proposal to withdraw or withhold treatment  
21 before implementing an agent's health care decision [~~advance~~  
22 ~~directive~~].

23 SECTION 10. (a) Not later than November 1, 2007, the Texas  
24 Supreme Court shall issue the rules and prescribe the forms  
25 necessary for the process established by Section 166.0465, Health  
26 and Safety Code, as added by this Act. The rules shall prescribe  
27 the method of service of the application under Section 166.0465 and

1 may require filing and service of notices, petitions, and briefs  
2 electronically to the extent the Supreme Court considers  
3 appropriate.

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

8 SECTION 11. An advance directive form executed under  
9 Chapter 166, Health and Safety Code, before the effective date of  
10 this Act is valid and shall be honored as if the form were executed  
11 on or after the effective date of this Act. If an attending  
12 physician refuses to honor a patient's advance directive or a  
13 health care or treatment decision made by or on behalf of a patient  
14 under an advance directive form executed before the effective date  
15 of this Act, the refusal is governed by Chapter 166, Health and  
16 Safety Code, as amended by this Act.

17 SECTION 12. This Act takes effect September 1, 2007.