

By: Laubenberg

H.B. No. 3970

A BILL TO BE ENTITLED

1 AN ACT

2 relating to advance directives or health care or treatment
3 decisions made by or on behalf of a patient.

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

5 SECTION 1. This Act mat be cited as the Patient and Family
6 Treatment Choice Rights Act of 2007.

7 SECTION 2. The purpose of this Act is to protect the rights
8 if patients and their families, of an attending physician is unable
9 or unwilling to comply with a patient's decision, whether that
10 decision is made in an advance directive or by a person with the
11 right and responsibility to make health care or treatment decisions
12 for the patient. This Act amends the applicable provisions of the
13 Advance Directives act (Chapter 166, Health and Safety Code).

14 SECTION 3. Sections 166.045(c) and (d), Health and Safety
15 Code, are amended to read as follows:

16 (c) If an attending physician is at any time unwilling or
17 unable to comply with a directive or treatment decision calling for
18 the provision of life-sustaining treatment, including, without
19 limitation, to a directive or treatment decision calling for the
20 provision of artificial nutrition and hydration, to a patient
21 diagnosed with a terminal or irreversible condition, the attending
22 physician shall immediately so notify in writing the health care
23 facility in which the patient is located, by and through an officer
24 of that facility, and the person responsible for the health care

1 decisions of the patient, and upon its receipt of such notice the
2 health care facility shall:

3 (1) provide, and thereafter continue to provide, the
4 directed life-sustaining treatment;

5 (2) substitute for the attending physician another
6 attending physician with privileges at that facility, who will
7 comply with such directive or treatment decision; and

8 (3) deliver to the person responsible for the health
9 care decisions of the patient a written statement informing the
10 person of that person's rights under Sections 166.045(c) and
11 166.046, such statement to include, with limitation:

12 (1) an exact copy of these provisions; and

13 (2) a copy of the registry list of health care
14 facilities and referral groups that have volunteered their
15 readiness to consider accepting such transfer as is provided in
16 Section 166.045(c)(4) or to assist in locating a facility willing
17 to accept such a transfer, which list is posted on the website
18 maintained by the Texas Health Care Information Council.

19 (4) Upon receipt of notice required by Subsection (3),
20 the person responsible for the health care decisions of the patient
21 or at any one or more times thereafter, that responsible person may:

22 (1) replace the attending physician with another
23 attending physician who will comply with such directive or
24 treatment decision and;

25 (2) request the patient be transferred to another
26 health care facility that will comply with such directive or
27 treatment decision. In the event the person responsible for the

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

10 (c-1) If an attending physician is at any time unwilling or
11 unable to comply with a directive or treatment decision calling for
12 the withdrawal of life-sustaining treatment to a patient diagnosed
13 with a terminal and irreversible condition, the attending physician
14 shall immediately so notify in writing the health care facility in
15 which the person is located, by and through an officer of that
16 facility, and the person responsible for the health care decisions
17 of the patient, and upon receipt of such notice, the health care
18 facility shall:

19 (1) review the patient's advance directive or receive
20 confirmation of any such treatment decision from the responsible
21 party;

22 (2) provide, and thereafter continue to provide,
23 life-sustaining treatment; and

24 (3) deliver to the responsible person a written
25 statement informing the person of that person's rights under
26 Sections 166.045 and 166.146, such statement to include, without
27 limitation, an exact copy of those provisions.

1 (c-2) Upon its receipt of such notice by the person
2 responsible for the health care decisions of the patient or at any
3 time thereafter, that responsible person may request the patient be
4 transferred to another health care facility that will comply with
5 such directive or treatment decision calling for the withdrawal of
6 life-sustaining treatment. In the event the person responsible for
7 the health care decisions of the patient requests a transfer, the
8 provisions of Section 166.046 shall apply, and the health care
9 facility shall deliver to the responsible person a copy of the
10 registry list of health care facilities and referral groups that
11 have volunteered their readiness to consider accepting such
12 transfer as is provided in Section 166.045(c)(4) or to assist in
13 locating a facility willing to accept such a transfer, which list is
14 posted on the website maintained by the Texas Health Care
15 Information Council.

16 (d) A physician, health professional acting under the
17 direction of a physician, or health care facility may be [~~is not~~
18 civilly [~~or criminally~~] liable or subject to review or disciplinary
19 action by the person's appropriate licensing board if the person
20 does not comply with the procedures set forth in Sections 166.045
21 and 166.046 [~~has complied with the procedures outlined in Section~~
22 ~~166.046~~]. In the event of such non-compliance and civil liability,
23 there shall be no limitation on remedies or damages, non-economic
24 or otherwise, notwithstanding any other law to the contrary.

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

27 (a) In the event the person responsible for the health care

1 decisions of a patient requests a transfer under Section 166.045,
2 the health care facility in which the patient is located shall at
3 that time and thereafter continue to make a reasonable, good faith
4 effort to locate for that responsible person:

5 (1) an alternative health care facility reasonably
6 acceptable to that person that will accept transfer of the patient
7 and comply with the patient's directive or the responsible person's
8 treatment decision; and

9 (2) an attending physician with privileges at that
10 alternative health care facility who is reasonably acceptable to
11 that responsible person, will accept such transfer, and will comply
12 with such directive or treatment decision.

13 (a-1) If and when such an alternative health care facility
14 and attending physician are located, the health care facility
15 shall:

16 (1) transfer the patient to that facility and
17 physician in a safe and timely manner, without cost to the patient;
18 and

19 (2) provide life-sustaining treatment to the patient
20 until an alternative health care facility, and an attending
21 physician with privileges at such facility, accept such transfer
22 and begin compliance with the directive or treatment decision. [~~(a)~~

23 ~~If an attending physician refuses to honor a patient's advance~~
24 ~~directive or a health care or treatment decision made by or on~~
25 ~~behalf of a patient, the physician's refusal shall be reviewed by an~~
26 ~~ethics or medical committee. The attending physician may not be a~~
27 ~~member of that committee. The patient shall be given~~

1 ~~life-sustaining treatment during the review.]~~

2 (b) Each health care facility licensed in the State of Texas
3 shall purchase insurance to cover the cost of such transfers and
4 life-sustaining treatment as are permitted or required under
5 Sections 166.045 166.046, to the extent that facility is qualified
6 to provide such transfers and/or treatment, except that such
7 coverage may be limited to that portion of such cost that exceeds
8 any portion covered and paid by any insurance covering the patient.

9 ~~[(b) The patient or the person responsible for the health care~~
10 ~~decisions of the individual who has made the decision regarding the~~
11 ~~directive or treatment decision:~~

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

16 ~~(2) shall be informed of the committee review process~~
17 ~~not less than 18 hours before the meeting called to discuss the~~
18 ~~patient's directive, unless the time period is waived by mutual~~
19 ~~agreement;~~

20 ~~(3) at the time of being so informed, shall be~~
21 ~~provided:~~

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

24 ~~(B) a copy of the registry list of health care~~
25 ~~providers and referral groups that have volunteered their readiness~~
26 ~~to consider accepting transfer or to assist in locating a provider~~
27 ~~willing to accept transfer that is posted on the website maintained~~

1 ~~by the Texas Health Care Information Council under Section 166.053,~~
2 ~~and~~

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

4 ~~(A) attend the meeting, and~~

5 ~~(B) receive a written explanation of the decision~~
6 ~~reached during the review process.]~~

7 (c) Sections 166.045 and 166.046 may not be construed to
8 impose on a home and community support services agency licensed
9 under Chapter 142 or similar organization an obligation that is
10 beyond the scope of the services or resources of the agency or
11 organization, and do not apply to hospice services provided by a
12 home and community support services agency licensed under Chapter
13 142.

14 ~~[(c) The written explanation required by~~
15 ~~Subsection(b)(2)(B) must be included in the patient's medical~~
16 ~~record.~~

17 ~~(d) If the attending physician, the patient, or the person~~
18 ~~responsible for the health care decisions of the individual does~~
19 ~~not agree with the decision reached during the review process under~~
20 ~~Subsection (b), the physician shall make a reasonable effort to~~
21 ~~transfer the patient to a physician who is willing to comply with~~
22 ~~the directive. If the patient is a patient in a health care~~
23 ~~facility, the facility's personnel shall assist the physician in~~
24 ~~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 ~~(e) If the patient or the person responsible for the health~~
3 ~~care decisions of the patient is requesting life-sustaining~~
4 ~~treatment that the attending physician has decided and the review~~
5 ~~process has affirmed is inappropriate treatment, the patient shall~~
6 ~~be given available life-sustaining treatment pending transfer~~
7 ~~under subsection (d). The patient is responsible for any costs~~
8 ~~incurred in transferring the patient to another facility. The~~
9 ~~physician and the health care facility are not obligated to provide~~
10 ~~life-sustaining treatment after the 10th day after the written~~
11 ~~decision required under subsection (b) is provided to the patient~~
12 ~~or the person responsible for the health care decisions of the~~
13 ~~patient unless ordered to do so under Subsection (g).~~

14 ~~(e-1) If during a previous admission to a facility a~~
15 ~~patient's attending physician and the review process under~~
16 ~~Subsection (b) have determined that life-sustaining treatment is~~
17 ~~inappropriate, and the patient is readmitted to the same facility~~
18 ~~within six months from the date of the decision reached during the~~
19 ~~review process conducted upon the previous admission, Subsections~~
20 ~~(b) through (e) need not be followed if the patient's attending~~
21 ~~physician and a consulting physician who is a member of the ethics~~
22 ~~or medical committee of the facility document on the patient's~~
23 ~~readmission that the patient's condition either has not improved or~~
24 ~~has deteriorated since the review process was conducted.~~

25 ~~(f) Life-sustaining treatment under this section may not be~~
26 ~~entered in the patient's medical record as medically unnecessary~~
27 ~~treatment until the time period provided under Subsection (e) has~~

1 ~~expired.~~

2 ~~(g) At the request of the patient or the person responsible~~
3 ~~for the health care decisions of the patient, the appropriate~~
4 ~~district or county court shall extend the time period provided~~
5 ~~under Subsection (e) only if the court finds, by a preponderance of~~
6 ~~the evidence, that there is a reasonable expectation that a~~
7 ~~physician or health care facility that will honor the patient's~~
8 ~~directive will be found if the time extension is granted.~~

9 ~~(h) This section may not be construed to impose an~~
10 ~~obligation on a facility or a home and community support services~~
11 ~~agency licensed under Chapter 142 or similar organization that is~~
12 ~~beyond the scope of the services or resources of the facility or~~
13 ~~agency. This section does not apply to hospice services provided by~~
14 ~~a home and community support services agency licensed under Chapter~~
15 ~~142.]~~

16 SECTION 5. Sections 166.015, 166.052, and 166.166 Health
17 and Safety Code, are repealed.

18 SECTION 6. This Act takes effect immediately if it receives
19 a vote of two-thirds of all the members elected to each house, as
20 provided by Section 39, Article III, Texas Constitution. If this
21 Act does not receive the vote necessary for immediate effect, this
22 Act takes effect September 1, 2007. Any partial invalidity of this
23 Act shall not affect the remainder.