By: Nelson  S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to transferable physician orders for life-sustaining and related treatment.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by adding Subdivision (16) to read as follows:

"Transferable physician orders form" has the meaning assigned by Section 166.201.

SECTION 2. Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.0075 to read as follows:

Sec. 166.0075. PERSON'S CHOICE. (a) A person may elect to execute or have executed on the person's behalf under this chapter:

(1) a directive under Subchapter B;
(2) an out-of-hospital DNR order under Subchapter C;
(3) a medical power of attorney under Subchapter D; or
(4) a transferable physician orders form under Subchapter E.

(b) As an alternative to or in addition to an advance directive executed under this chapter, a person may elect to execute or have executed on the person's behalf a transferable physician orders form under Subchapter E for the provision or withholding of life-sustaining and related treatment based on the person's wishes.

SECTION 3. Section 166.008, Health and Safety Code, is
amended to read as follows:

Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS. To the extent that a treatment decision or an advance directive or transferable physician orders form validly executed or issued under this chapter conflicts with another treatment decision or an advance directive or transferable physician orders form executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

SECTION 4. Chapter 166, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TRANSFERABLE PHYSICIAN ORDERS FOR LIFE-SUSTAINING AND RELATED TREATMENT

Sec. 166.201. DEFINITIONS. In this subchapter:

(1) "Advanced practice nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Health care professional" has the meaning assigned by Section 166.081.

(3) "Health care provider" means a health care provider as defined by Section 166.151. The term includes a health care provider described by Section 166.004 and a health care professional.

(4) "Minor" means an unmarried person younger than 18 years of age who has not had the person's disabilities of minority removed for general purposes.

(5) "Transferable physician orders form" means a standardized form containing physician orders executed by a
physician or advanced practice nurse and by the patient who is the 
subject of the orders or another person described by Section
166.202(b)(2) that instructs health care providers regarding the 
provision or withholding of life-sustaining and related treatment 
to a patient in accordance with the patient's advance directive or 
wishes as determined through conversation with the patient, the 
person described by Section 166.206 if the patient is a minor, or a 
representative authorized to make health care decisions for the 
patient.

Sec. 166.202. TRANSFERABLE PHYSICIAN ORDERS. (a) Physician 
orders for the provision or withholding of life-sustaining and 
related treatment in accordance with the patient's wishes may be 
entered on a transferable physician orders form that complies with 
this subchapter.

(b) To be valid, a transferable physician orders form under 
this subchapter must be executed by:

(1) A physician or advanced practice nurse who has 
personally examined the patient; and

(2) the patient who is the subject of the transferable 
physician orders, the person described by Section 166.206 if the 
patient is a minor, or a representative authorized to make health 
care decisions for the patient.

(c) A transferable physician orders form is effective on 
execution.

(d) A facility that is a health care provider shall keep an 
executed transferable physician orders form as the first page in 
the patient's medical record and send the form with the patient if
the patient is transferred to another facility.

Sec. 166.203. FORM OF TRANSFERABLE PHYSICIAN ORDERS. (a) Transferable physician orders must be contained in the standard written form specified by rule. The Department of State Health Services and the Department of Aging and Disability Services shall develop the form.

(b) The standard form must be a one-page document that is printed on bright pink paper in a format that makes the document readily identifiable as a transferable physician orders form. The form must be designed to provide information regarding life-sustaining and related treatment of a patient in accordance with the patient's wishes as evidenced by the patient's advance directive or as expressed orally by the patient or the patient's parent, legal guardian, or representative authorized to make health care decisions for the patient.

(c) The form must include:

   (1) the physician's orders, including the basis of the orders, regarding:

       (A) cardiopulmonary resuscitation;

       (B) the level of medical intervention in the event of a medical emergency, including the use of artificial life support but excluding medical interventions or procedures to provide comfort or alleviate a patient's pain;

       (C) the use of antibiotics; and

       (D) the use of medically administered fluids and nutrition;

   (2) a place for the signature of the physician or
advanced practice nurse;

(3) a statement indicating whether the patient has executed an advance directive or has a representative authorized to make health care decisions for the patient;

(4) a place for the signature of the patient, the person described by Section 166.206 if the patient is a minor, or a representative authorized to make health care decisions for the patient;

(5) a statement acknowledging agreement with the orders of the physician that appears directly above the signature line required by Subdivision (4); and

(6) the date, location, and outcome of any review of the form by:

(A) the patient, the person described by Section 166.206 if the patient is a minor, or a representative authorized to make health care decisions for the patient; or

(B) the treating physician or a facility's medical review or ethics committee.

Sec. 166.204. DUTY OF FACILITIES FOLLOWING PATIENT TRANSFER. If a patient with a transferable physician orders form is transferred from one health care provider that is a facility to another facility, the transferring facility shall communicate the existence of the transferable physician orders form to the receiving facility before the transfer occurs. The transferable physician orders form must accompany the patient to the receiving facility, and the form remains in effect following the transfer. The form must be placed as the first page in the patient's medical
records, and the receiving facility and the health care
professionals at the facility shall honor the transferable
physician orders as provided by this subchapter until the document
becomes invalid.

Sec. 166.205. PATIENT DESIRE SUPERSEDES TRANSFERABLE
PHYSICIAN ORDERS. The desire of a patient, including a patient who
is a minor, supersedes the effect of transferable physician orders
when the desire is communicated to a health care provider.

Sec. 166.206. TRANSFERABLE PHYSICIAN ORDERS FORM PREPARED
FOR MINOR PATIENT. The following persons may execute a
transferable physician orders form on behalf of a patient who is a
minor:

(1) the patient's parents; or
(2) the patient's legal guardian.

Sec. 166.207. DURATION OF TRANSFERABLE PHYSICIAN ORDERS
FORM. A transferable physician orders form remains in effect until
the document is replaced or the document otherwise becomes invalid.

Sec. 166.208. LIMITATION ON CIVIL OR CRIMINAL LIABILITY. A
health care provider or an employee of a health care provider is not
subject to criminal or civil liability for good faith compliance
with or reliance on the physician orders in a transferable
physician orders form.

Sec. 166.209. HONORING TRANSFERABLE PHYSICIAN ORDERS DOES
NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit
an offense under Section 22.08, Penal Code, by withholding
life-sustaining or related treatment from a person in accordance
with transferable physician orders executed under this subchapter.
Sec. 166.210. PREGNANT PATIENTS. A person may not withhold life-sustaining treatment under transferable physician orders executed under this subchapter from a patient known by the person to be pregnant.

Sec. 166.211. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Sec. 166.212. RULES. The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement and administer this subchapter.

SECTION 5. (a) Not later than January 1, 2008, the Department of State Health Services and the Department of Aging and Disability Services shall develop the transferable physician orders form required by Subchapter E, Chapter 166, Health and Safety Code, as added by this Act.

(b) Not later than May 1, 2008, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement Subchapter E, Chapter 166, Health and Safety Code, as added by this Act.

SECTION 6. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2007.

(b) Sections 166.202 and 166.204, Health and Safety Code, as added by this Act, take effect May 1, 2008.