

By: Nelson

S.B. No. 28

A BILL TO BE ENTITLED

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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:

(16) "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

1 amended to read as follows:

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

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

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

14 Sec. 166.201. DEFINITIONS. In this subchapter:

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

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

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

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

26 (5) "Transferable physician orders form" means a
27 standardized form containing physician orders executed by a

1 physician or advanced practice nurse and by the patient who is the
2 subject of the orders or another person described by Section
3 166.202(b)(2) that instructs health care providers regarding the
4 provision or withholding of life-sustaining and related treatment
5 to a patient in accordance with the patient's advance directive or
6 wishes as determined through conversation with the patient, the
7 person described by Section 166.206 if the patient is a minor, or a
8 representative authorized to make health care decisions for the
9 patient.

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

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

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

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

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

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

1 the patient is transferred to another facility.

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

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

16 (c) The form must include:

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

19 (A) cardiopulmonary resuscitation;

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

24 (C) the use of antibiotics; and

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

27 (2) a place for the signature of the physician or

1 advanced practice nurse;

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

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

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

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

14 (A) the patient, the person described by Section
15 166.206 if the patient is a minor, or a representative authorized to
16 make health care decisions for the patient; or

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

19 Sec. 166.204. DUTY OF FACILITIES FOLLOWING PATIENT
20 TRANSFER. If a patient with a transferable physician orders form is
21 transferred from one health care provider that is a facility to
22 another facility, the transferring facility shall communicate the
23 existence of the transferable physician orders form to the
24 receiving facility before the transfer occurs. The transferable
25 physician orders form must accompany the patient to the receiving
26 facility, and the form remains in effect following the transfer.
27 The form must be placed as the first page in the patient's medical

1 records, and the receiving facility and the health care
2 professionals at the facility shall honor the transferable
3 physician orders as provided by this subchapter until the document
4 becomes invalid.

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

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

13 (1) the patient's parents; or

14 (2) the patient's legal guardian.

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

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

23 Sec. 166.209. HONORING TRANSFERABLE PHYSICIAN ORDERS DOES
24 NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit
25 an offense under Section 22.08, Penal Code, by withholding
26 life-sustaining or related treatment from a person in accordance
27 with transferable physician orders executed under this subchapter.

1 Sec. 166.210. PREGNANT PATIENTS. A person may not withhold
2 life-sustaining treatment under transferable physician orders
3 executed under this subchapter from a patient known by the person to
4 be pregnant.

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

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

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

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

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

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