

By: Nelson

S.B. No. 28

A BILL TO BE ENTITLED

AN ACT

1
2 relating to transferable physician orders for life-sustaining and
3 related treatment.

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

5 SECTION 1. The heading to Chapter 166, Health and Safety
6 Code, is amended to read as follows:

7 CHAPTER 166. ADVANCE DIRECTIVES; TRANSFERABLE PHYSICIAN ORDERS

8 SECTION 2. Section 166.001, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 166.001. SHORT TITLE. This chapter may be cited as
11 the Advance Directives and Transferable Physician Orders Act.

12 SECTION 3. Section 166.002, Health and Safety Code, is
13 amended by adding Subdivision (16) to read as follows:

14 (16) "Transferable physician orders" has the meaning
15 assigned by Section 166.201.

16 SECTION 4. Sections 166.006 and 166.007, Health and Safety
17 Code, are amended to read as follows:

18 Sec. 166.006. EFFECT OF ADVANCE DIRECTIVE OR TRANSFERABLE
19 PHYSICIAN ORDERS ON INSURANCE POLICY AND PREMIUMS. (a) The fact
20 that a person has executed or issued an advance directive or is the
21 subject of transferable physician orders does not:

22 (1) restrict, inhibit, or impair in any manner the
23 sale, procurement, or issuance of a life insurance policy to that
24 person; or

1 (2) modify the terms of an existing life insurance
2 policy.

3 (b) Notwithstanding the terms of any life insurance policy,
4 the fact that life-sustaining treatment is withheld or withdrawn
5 from an insured [~~qualified~~] patient under this chapter does not
6 legally impair or invalidate that person's life insurance policy
7 and may not be a factor for the purpose of determining, under the
8 life insurance policy, whether benefits are payable or the cause of
9 death.

10 (c) The fact that a person has executed or issued or failed
11 to execute or issue an advance directive or is the subject of
12 transferable physician orders may not be considered in any way in
13 establishing insurance premiums.

14 Sec. 166.007. EXECUTION OF ADVANCE DIRECTIVE OR
15 TRANSFERABLE PHYSICIAN ORDERS MAY NOT BE REQUIRED. A physician,
16 health facility, health care provider, insurer, or health care
17 service plan may not require a person to execute or issue an advance
18 directive or to execute or have executed on the person's behalf
19 transferable physician orders as a condition for obtaining
20 insurance for health care services or receiving health care
21 services.

22 SECTION 5. Subchapter A, Chapter 166, Health and Safety
23 Code, is amended by adding Section 166.0075 to read as follows:

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

26 (1) a directive under Subchapter B;

27 (2) an out-of-hospital DNR order under Subchapter C;

1 (3) a medical power of attorney under Subchapter D; or
2 (4) a transferable physician orders form under
3 Subchapter E.

4 (b) As an alternative to or in addition to an advance
5 directive executed under this chapter, a person may elect to
6 execute or have executed on the person's behalf transferable
7 physician orders under Subchapter E for the provision or
8 withholding of life-sustaining and related treatment based on the
9 person's medical condition and wishes. The provisions of this
10 chapter applicable to advance directives do not apply to
11 transferable physician orders or a transferable physician orders
12 form unless specifically provided otherwise by this chapter.

13 SECTION 6. Section 166.008, Health and Safety Code, is
14 amended to read as follows:

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

23 SECTION 7. Chapter 166, Health and Safety Code, is amended
24 by adding Subchapter E to read as follows:

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

27 Sec. 166.201. DEFINITIONS. In this subchapter:

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

3 (2) "Executive commissioner" means the executive
4 commissioner of the Health and Human Services Commission.

5 (3) "Health care professional" has the meaning
6 assigned by Section 166.081.

7 (4) "Health care provider" means a health care
8 provider as defined by Section 166.151. The term includes a health
9 care provider described by Section 166.004 and a health care
10 professional.

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

14 (6) "Transferable physician orders" means physician
15 orders executed by a physician or advanced practice nurse and by the
16 patient who is the subject of the orders or another person described
17 by Section 166.202(b)(2) on the form specified under Section
18 166.203 that:

19 (A) is prepared in accordance with this
20 subchapter by a health care professional in consultation with:

21 (i) the patient, including a minor;
22 (ii) the person described by Section
23 166.209 if the patient is a minor; or

24 (iii) a representative authorized to make
25 health care decisions for the patient; and

26 (B) instructs health care providers regarding
27 the provision or withholding of life-sustaining and related

1 treatment based on the patient's medical condition and wishes.

2 Sec. 166.202. TRANSFERABLE PHYSICIAN ORDERS. (a) A
3 physician, advanced practice nurse, or other health care
4 professional may enter a patient's preferences and the physician
5 orders for the provision or withholding of life-sustaining and
6 related treatment on a transferable physician orders form that
7 complies with this subchapter.

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

10 (1) a physician or an advanced practice nurse; and

11 (2) the patient who is the subject of the transferable
12 physician orders, the person described by Section 166.209 if the
13 patient is a minor, or a representative authorized to make health
14 care decisions for the patient.

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

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

22 (b) The standard form must be a one-page document that is
23 printed on paper of a distinctive color and is in a format that
24 makes the document readily identifiable as a transferable physician
25 orders form. The form must be designed to provide information
26 regarding life-sustaining and related treatment of a patient in
27 accordance with the patient's medical condition and wishes.

1 Information may be noted on the front and back of the form.

2 (c) The form must include:

3 (1) a title that readily identifies the document as
4 transferable physician orders for life-sustaining treatment;

5 (2) the printed or typed name of the patient for whom
6 the document is prepared and the patient's date of birth;

7 (3) at the top of the document a statement that:

8 (A) a health care provider is to follow the
9 transferable physician orders and then contact the physician or
10 advanced practice nurse who executed the document;

11 (B) the orders are based on the patient's medical
12 condition and wishes; and

13 (C) any section not completed implies full
14 treatment for that section;

15 (4) a separate section that addresses the patient's
16 desires and physician's orders for each of the following:

17 (A) whether to attempt or not attempt
18 cardiopulmonary resuscitation if the patient does not have a pulse
19 and is not breathing;

20 (B) the level of medical interventions if the
21 patient has a pulse or is breathing, including the provision of
22 comfort measures only, limited additional interventions, or full
23 treatment;

24 (C) the withholding or administration of
25 antibiotics; and

26 (D) the use of artificially administered
27 nutrition;

1 (5) a separate section for a summary of the patient's
2 medical condition and identification of the persons with whom the
3 physician or advanced practice nurse discussed the patient's
4 medical condition, including:

5 (A) the patient;

6 (B) the patient's parent or legal guardian if the
7 patient is a minor; and

8 (C) a representative authorized to make health
9 care decisions for the patient, including an adult patient's legal
10 guardian;

11 (6) a place for the date the document was executed,
12 places for the printed name and signature of the physician or
13 advanced practice nurse, and a place for the physician's or
14 advanced practice nurse's telephone information;

15 (7) a place for the signature of the patient, the
16 person described by Section 166.209 if the patient is a minor, and a
17 representative authorized to make health care decisions for the
18 patient;

19 (8) places for the optional inclusion of contact
20 information of the health care professional preparing the form and
21 the person described by Section 166.209 if the patient is a minor or
22 a representative authorized to make health care decisions for the
23 patient;

24 (9) directions for health care providers regarding:

25 (A) the completion of the document, including a
26 statement that:

27 (i) the document must be completed by a

1 health care professional based on patient preferences and medical
2 indications;

3 (ii) the document, to be valid, must be
4 signed by a physician or advanced practice nurse and the patient,
5 the person described by Section 166.209 if the patient is a minor,
6 or a representative authorized to make health care decisions for
7 the patient;

8 (iii) verbal orders are acceptable, in
9 accordance with health care provider policy, with follow-up
10 signature by a physician or advanced practice nurse and the
11 patient, the person described by Section 166.209 if the patient is a
12 minor, or a representative authorized to make health care decisions
13 for the patient; and

14 (iv) use of the original document is
15 strongly encouraged, but that photocopies and faxes of the signed
16 document are legal and valid;

17 (B) the use of the document and the medical
18 procedures that may or may not be performed under each category
19 described in Subdivision (4), including a statement that:

20 (i) any incomplete section of the document
21 implies full treatment for that section;

22 (ii) a defibrillator, including an
23 automated external defibrillator (AED), should not be used on a
24 patient who has chosen "Do Not Attempt Resuscitation";

25 (iii) oral fluids and nutrition must always
26 be offered if medically feasible;

27 (iv) if comfort cannot be achieved in the

1 current setting, the patient, including a patient who has chosen
2 "Comfort Measures Only," should be transferred to a setting able to
3 provide comfort;

4 (v) intravenous (IV) medication to enhance
5 comfort may be appropriate for a patient who has chosen "Comfort
6 Measures Only";

7 (vi) treatment of dehydration is a measure
8 that prolongs life and that a patient who desires IV fluids should
9 indicate "Limited Interventions" or "Full Treatment"; and

10 (vii) a patient (including a minor), the
11 person described by Section 166.209 if the patient is a minor, or a
12 representative authorized to make health care decisions for the
13 patient, may request alternative treatment;

14 (C) the periodic review of the document if:

15 (i) the patient is transferred from one
16 care setting or care level to another;

17 (ii) the patient's treatment preferences
18 change; or

19 (iii) there is a substantial change in the
20 patient's health status; and

21 (D) the drawing of a line through sections
22 described by Subdivisions (4)-(6) and the writing of "VOID" in
23 large letters on the document if the document is replaced or becomes
24 invalid;

25 (10) a statement that the federal Health Insurance
26 Portability and Accountability Act (HIPAA) permits disclosure of
27 the information on the document to other health care providers as

1 necessary; and

2 (11) a statement that the document is to be sent with
3 the patient when the patient is transferred or discharged from a
4 facility that is a health care provider.

5 (d) On the recommendation of the Department of State Health
6 Services and the Department of Aging and Disability Services, or at
7 the executive commissioner's discretion, the executive
8 commissioner by rule may modify the standard form of the
9 transferable physician orders described in this section to
10 accomplish the purposes of this subchapter.

11 (e) A photocopy or other complete facsimile of the original
12 written transferable physician orders form executed under this
13 subchapter may be used for any purpose for which the original form
14 may be used under this subchapter.

15 Sec. 166.204. STATEMENT RELATING TO TRANSFERABLE PHYSICIAN
16 ORDERS. (a) This section applies only to a health care provider
17 that is:

18 (1) a hospital;

19 (2) an institution licensed under Chapter 242,
20 including a skilled nursing facility;

21 (3) a home and community support services agency;

22 (4) a personal care facility; or

23 (5) a special care facility.

24 (b) A health care provider shall maintain written policies
25 regarding the implementation of transferable physician orders. The
26 policies must include a clear and precise statement of any
27 procedure the health care provider is unwilling or unable to

1 provide or withhold in accordance with transferable physician
2 orders.

3 (c) Except as provided by Subsection (e), a health care
4 provider shall provide written notice of the policies described by
5 Subsection (b) to an individual at the earlier of:

6 (1) the time the individual is admitted to receive
7 services from the provider; or

8 (2) the time the provider begins providing care to the
9 individual.

10 (d) If, at the time notice is to be provided under
11 Subsection (c), the individual is incompetent or otherwise
12 incapacitated and unable to receive the notice required by this
13 section, the health care provider shall provide the required
14 written notice to appropriate individuals to the same extent and in
15 the same manner as notice of policies on the implementation of
16 advance directives is required to be provided under Sections
17 166.004(d)-(f) in the case of an individual who is incompetent or
18 otherwise incapacitated and unable to receive the notice required
19 by those subsections.

20 (e) This section does not apply to outpatient hospital
21 services, including emergency services.

22 Sec. 166.205. DUTY OF CERTAIN HEALTH CARE PROVIDERS. (a) A
23 health care provider that is a facility, on admission of a patient
24 to the facility, shall make a good faith effort to determine whether
25 the patient is the subject of transferable physician orders.

26 (b) A health care provider that is a facility shall offer
27 each patient with a terminal or irreversible condition, and may

1 offer other patients, an opportunity to have a transferable
2 physician orders form prepared on the patient's admission to the
3 facility.

4 (c) A health care provider that is a facility shall place a
5 patient's transferable physician orders form in a prominent
6 location in the patient's medical records and may retain a copy of
7 the transferable physician orders form in the records if the
8 original document is transferred with the patient to another
9 facility or is provided to the patient on discharge.

10 (d) A health care professional at a health care provider
11 that is a facility shall review the transferable physician orders
12 with the patient, the person described by Section 166.209 if the
13 patient is a minor, or, if the patient is incompetent, a
14 representative authorized to make health care decisions for the
15 patient, when:

16 (1) there is a substantial, permanent change in the
17 patient's health status;

18 (2) the patient is transferred from one care setting
19 to another; or

20 (3) the patient's treatment preferences change.

21 (e) A transferable physician orders form is fully
22 transferable between all facilities licensed to provide health care
23 services in this state.

24 (f) A transferring health care provider that is a facility
25 shall send any original transferable physician orders form with the
26 patient to a receiving facility or with the patient when the patient
27 is discharged. The receiving facility and the health care

1 professionals at the facility shall honor the transferable
2 physician orders as provided by this subchapter until the document
3 becomes invalid.

4 Sec. 166.206. DUTY OF HEALTH CARE PROFESSIONAL RESPONDING
5 TO CALL FOR ASSISTANCE IN OUT-OF-HOSPITAL SETTING. (a) When
6 responding to a call for assistance in an out-of-hospital setting,
7 as defined by Section 166.081, a health care professional shall
8 honor transferable physician orders if the health care
9 professional:

10 (1) discovers an executed transferable physician
11 orders form on arrival at the scene; and

12 (2) complies with this section.

13 (b) The responding health care professional must establish
14 the identity of the person as the person who is the subject of the
15 transferable physician orders.

16 (c) The responding health care professional must determine
17 that the transferable physician orders form appears to be valid in
18 that the document includes:

19 (1) written responses in the places designated on the
20 document for the names, signatures, and other information required
21 of persons executing the orders;

22 (2) a date in the place designated on the document for
23 the date the orders were executed; and

24 (3) in the appropriate places designated on the
25 document for indicating that the document has been properly
26 executed, the signature of:

27 (A) the physician or advanced practice nurse; and

1 (B) the person who is the subject of the
2 transferable physician orders, the person described by Section
3 166.209 if the person is a minor, or a representative authorized to
4 make health care decisions for the person.

5 (d) If the conditions prescribed by Subsections (a)-(c) are
6 not determined to apply by the responding health care professional
7 at the scene, the transferable physician orders may not be honored
8 and life-sustaining treatment otherwise required by law or local
9 emergency medical services protocols shall be initiated or
10 continued. A responding health care professional acting in an
11 out-of-hospital setting is not required to accept or interpret a
12 transferable physician orders form that does not meet the
13 requirements of this subchapter.

14 (e) The original transferable physician orders form, or a
15 copy of the original form when the original form is not available,
16 must accompany the person during transport.

17 (f) A record shall be made and maintained of the
18 circumstances of each emergency medical services response in which
19 a transferable physician orders form is encountered.

20 (g) Transferable physician orders documented or evidenced
21 in the manner prescribed by this subchapter are valid and shall be
22 honored by a responding health care professional in an
23 out-of-hospital setting unless a person found at the scene:

24 (1) identifies himself or herself as the person who is
25 the subject of the transferable physician orders or as the person's
26 attending physician, the person described by Section 166.209 if the
27 person is a minor, or a representative authorized to make health

1 care decisions for the person; and

2 (2) requests that cardiopulmonary resuscitation or
3 other life-sustaining treatment be initiated or continued.

4 Sec. 166.207. COMPLIANCE WITH ORDERS BY CERTAIN HEALTH CARE
5 PROVIDERS. If the policies of a health care provider that is a
6 facility preclude compliance with the transferable physician
7 orders that apply to a person who is admitted to or is a resident of
8 the facility, that facility shall take all reasonable steps to:

9 (1) notify the person, the person described by Section
10 166.209 if the person is a minor, or, if the person is incompetent
11 or otherwise incapacitated and unable to receive the notice
12 required by this section, the representative authorized to make
13 health care decisions for the person, of the facility's policy; and

14 (2) effect the transfer of the person to the person's
15 home or to a facility where the provisions of this subchapter can be
16 carried out.

17 Sec. 166.208. PATIENT DESIRE SUPERSEDES TRANSFERABLE
18 PHYSICIAN ORDERS. The desire of a patient, including a patient who
19 is a minor, supersedes the effect of transferable physician orders
20 when the desire is communicated to a health care provider.

21 Sec. 166.209. TRANSFERABLE PHYSICIAN ORDERS FORM PREPARED
22 FOR MINOR PATIENT. The following persons may execute a
23 transferable physician orders form on behalf of a patient who is a
24 minor:

25 (1) the patient's parents; or

26 (2) the patient's legal guardian.

27 Sec. 166.210. DURATION OF TRANSFERABLE PHYSICIAN ORDERS

1 FORM. A transferable physician orders form remains in effect
2 until:

3 (1) the document is replaced or voided as prescribed
4 by Section 166.211; or

5 (2) the document otherwise becomes invalid.

6 Sec. 166.211. TRANSFERABLE PHYSICIAN ORDERS VOIDABLE. (a)
7 A patient who is the subject of transferable physician orders may,
8 at any time without regard to the patient's mental state or
9 competency, void the transferable physician orders form.

10 (b) An action taken under Subsection (a) takes effect only
11 when the attending physician receives notice of the action. The
12 attending physician or the physician's designee shall record in the
13 patient's medical record the time, date, and place the form is
14 voided and, if different, the time, date, and place that the
15 physician received the notice. In addition to following the
16 applicable instructions on the transferable physician orders form,
17 the attending physician or the physician's designee shall enter the
18 word "VOID" on the front and back of the copy of the transferable
19 physician orders form, if any, in the patient's medical record.

20 (c) A person is not required to honor the voiding of
21 transferable physician orders under this section unless the person
22 has actual knowledge of that action.

23 Sec. 166.212. EXECUTING ORDERS OR WITHHOLDING
24 LIFE-SUSTAINING PROCEDURES IN GOOD FAITH. (a) A physician or
25 advanced practice nurse who in good faith executes transferable
26 physician orders with respect to a patient in accordance with this
27 subchapter is not civilly or criminally liable for that action.

1 (b) A health care provider who in good faith causes or
2 participates in withholding life-sustaining or related treatment
3 from a patient in accordance with transferable physician orders
4 executed under this subchapter is not:

5 (1) civilly or criminally liable for that action;

6 (2) guilty of unprofessional conduct as a result of
7 that action;

8 (3) in violation of any licensing or regulatory law or
9 rules of this state as a result of that action; or

10 (4) subject to any disciplinary action or sanction by
11 any licensing or regulatory agency of this state as a result of that
12 action.

13 Sec. 166.213. FAILURE TO EFFECT TRANSFERABLE PHYSICIAN
14 ORDERS. (a) A health care provider who has no actual knowledge of
15 transferable physician orders executed under this subchapter is not
16 civilly or criminally liable for failing to act in accordance with
17 the transferable physician orders.

18 (b) Except as provided by Subsection (e), a health care
19 provider is subject to review and disciplinary action by the
20 appropriate licensing board for failing to act in accordance with a
21 patient's transferable physician orders. This subsection does not
22 limit remedies available under other laws of this state.

23 (c) If an attending physician refuses to execute a
24 transferable physician orders form, the physician shall inform the
25 patient, the person described by Section 166.209 if the patient is a
26 minor, or a representative authorized to make health care decisions
27 for the patient and, if that person so directs, shall make a

1 reasonable effort to transfer the person to another physician who
2 is willing to execute a transferable physician orders form.

3 (d) If an attending physician refuses to comply with
4 transferable physician orders regarding life-sustaining treatment
5 executed under this subchapter and does not wish to follow the
6 procedure established under Section 166.214, life-sustaining
7 treatment shall be provided to the patient, but only until a
8 reasonable opportunity has been afforded for the transfer of the
9 patient to another physician or health care provider that is a
10 facility that is willing to comply with the transferable physician
11 orders.

12 (e) A physician or other health care provider is not civilly
13 or criminally liable or subject to review or disciplinary action by
14 the person's appropriate licensing board if the person has complied
15 with the procedures outlined in Section 166.214.

16 Sec. 166.214. PROCEDURE IF NOT EFFECTING TRANSFERABLE
17 PHYSICIAN ORDERS. (a) If an attending physician refuses to honor a
18 patient's transferable physician orders regarding life-sustaining
19 treatment, the physician's refusal shall be reviewed by an ethics
20 or medical committee in the same manner and to the same extent as an
21 attending physician's refusal to honor an advance directive is
22 reviewed under Section 166.046. The attending physician may not be
23 a member of that committee. The patient shall be given
24 life-sustaining treatment during the review.

25 (b) At the time of being informed of the committee review
26 process, the patient, the person described by Section 166.209 if
27 the patient is a minor, or a representative authorized to make

1 health care decisions for the patient shall be provided:

2 (1) a copy of the appropriate statement described by
3 Section 166.219; and

4 (2) a copy of the registry list of health care
5 providers and referral groups that have volunteered their readiness
6 to consider accepting transfer or to assist in locating a provider
7 willing to accept transfer that is posted on the website maintained
8 by the department under Section 166.053.

9 (c) A written explanation of the decision reached during the
10 review process must be included in the patient's medical record.

11 (d) If the attending physician, the patient, the person
12 described by Section 166.209 if the patient is a minor, or a
13 representative authorized to make health care decisions for the
14 patient does not agree with the decision reached during the review
15 process under this section, the physician shall make a reasonable
16 effort to transfer the patient to a physician who is willing to
17 comply with the transferable physician orders. If the patient is a
18 patient of a health care provider that is a facility, the facility's
19 personnel shall assist the physician in arranging the patient's
20 transfer to:

21 (1) another physician;

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

23 or

24 (3) another facility.

25 (e) If the patient, the person described by Section 166.209
26 if the patient is a minor, or a representative authorized to make
27 health care decisions for the patient is requesting life-sustaining

1 treatment that the attending physician has decided and the review
2 process has affirmed is inappropriate treatment, the patient shall
3 be given available life-sustaining treatment pending transfer
4 under Subsection (d). The patient is responsible for any costs
5 incurred in transferring the patient to another facility. The
6 physician and the facility are not obligated to provide
7 life-sustaining treatment after the 10th day after the date the
8 written decision required under the review process is provided to
9 the patient, the person described by Section 166.209 if the patient
10 is a minor, or a representative authorized to make health care
11 decisions for the patient unless ordered to do so under Subsection
12 (h).

13 (f) If during a previous admission to a health care provider
14 that is a facility a patient's attending physician and the review
15 process under this section have determined that life-sustaining
16 treatment is inappropriate, and the patient is readmitted to the
17 same facility within six months from the date of the decision
18 reached during the review process conducted on the previous
19 admission, the applicable procedures as described by Section
20 166.046(b) and Subsections (b)-(e) of this section need not be
21 followed if the patient's attending physician and a consulting
22 physician who is a member of the ethics or medical committee of the
23 facility document on the patient's readmission that the patient's
24 condition either has not improved or has deteriorated since the
25 review process was conducted.

26 (g) Life-sustaining treatment under this section may not be
27 entered in the patient's medical record as medically unnecessary

1 treatment until the period provided under Subsection (e) has
2 expired.

3 (h) At the request of the patient, the person described by
4 Section 166.209 if the patient is a minor, or a representative
5 authorized to make health care decisions for the patient, the
6 appropriate district or county court shall extend the period
7 provided under Subsection (e) only if the court finds, by a
8 preponderance of the evidence, that there is a reasonable
9 expectation that a physician or another health care provider that
10 will honor the patient's transferable physician orders will be
11 found if the time extension is granted.

12 (i) This section may not be construed to impose an
13 obligation on a health care provider that is a facility, including a
14 home and community support services agency licensed under Chapter
15 142 or similar organization, that is beyond the scope of the
16 services or resources of the facility. This section does not apply
17 to hospice services provided by a home and community support
18 services agency licensed under Chapter 142.

19 Sec. 166.215. HONORING TRANSFERABLE PHYSICIAN ORDERS DOES
20 NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit
21 an offense under Section 22.08, Penal Code, by withholding
22 life-sustaining or related treatment from a person in accordance
23 with transferable physician orders executed under this subchapter.

24 Sec. 166.216. PREGNANT PATIENTS. A person may not withhold
25 life-sustaining treatment under transferable physician orders
26 executed under this subchapter from a patient known by the person to
27 be pregnant.

1 Sec. 166.217. MERCY KILLING NOT CONDONED. This subchapter
2 does not condone, authorize, or approve mercy killing or permit an
3 affirmative or deliberate act or omission to end life except to
4 permit the natural process of dying as provided by this subchapter.

5 Sec. 166.218. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
6 This subchapter does not impair or supersede any legal right or
7 responsibility a person may have to effect the withholding or
8 withdrawal of life-sustaining or related treatment in a lawful
9 manner, provided that if an attending physician or health care
10 provider is unwilling to honor a patient's transferable physician
11 orders to provide life-sustaining treatment, life-sustaining
12 treatment is required to be provided to the patient, but only until
13 a reasonable opportunity has been afforded for transfer of the
14 patient to another physician or health care provider willing to
15 comply with the transferable physician orders.

16 Sec. 166.219. STATEMENTS EXPLAINING PATIENT'S RIGHT TO
17 TRANSFER. (a) In cases in which the attending physician refuses to
18 honor a patient's transferable physician orders requesting the
19 provision of life-sustaining treatment, the statement required by
20 Section 166.214(b)(1) shall be in substantially the form provided
21 in Section 166.052(a), except that the form may be revised as
22 necessary to apply to transferable physician orders.

23 (b) In cases in which the attending physician refuses to
24 comply with a patient's transferable physician orders requesting
25 the withholding of life-sustaining treatment, the statement
26 required by Section 166.214(b)(1) shall be in substantially the
27 form provided in Section 166.052(b), except that the form may be

1 revised as necessary to apply to transferable physician orders.

2 Sec. 166.220. RULES. The executive commissioner shall
3 adopt rules necessary to implement and administer this subchapter.

4 SECTION 8. Section 166.033, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written
7 directive may be in the following form:

8 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

9 Instructions for completing this document:

10 This is an important legal document known as an Advance
11 Directive. It is designed to help you communicate your wishes about
12 medical treatment at some time in the future when you are unable to
13 make your wishes known because of illness or injury. These wishes
14 are usually based on personal values. In particular, you may want
15 to consider what burdens or hardships of treatment you would be
16 willing to accept for a particular amount of benefit obtained if you
17 were seriously ill.

18 You are encouraged to discuss your values and wishes with
19 your family or chosen spokesperson, as well as your physician. Your
20 physician, other health care provider, or medical institution may
21 provide you with various resources to assist you in completing your
22 advance directive. Brief definitions are listed below and may aid
23 you in your discussions and advance planning. Initial the
24 treatment choices that best reflect your personal preferences.
25 Provide a copy of your directive to your physician, usual hospital,
26 and family or spokesperson. Consider a periodic review of this
27 document. By periodic review, you can best assure that the

1 directive reflects your preferences.

2 In addition to this advance directive, Texas law provides for
3 two other types of directives that can be important during a serious
4 illness. These are the Medical Power of Attorney and the
5 Out-of-Hospital Do-Not-Resuscitate Order. Texas law also provides
6 for transferable physician orders. You may wish to discuss these
7 with your physician, family, hospital representative, or other
8 advisers. You may also wish to complete a directive related to the
9 donation of organs and tissues.

10 DIRECTIVE

11 I, _____, recognize that the best health care is based
12 upon a partnership of trust and communication with my physician. My
13 physician and I will make health care decisions together as long as
14 I am of sound mind and able to make my wishes known. If there comes
15 a time that I am unable to make medical decisions about myself
16 because of illness or injury, I direct that the following treatment
17 preferences be honored:

18 If, in the judgment of my physician, I am suffering with a
19 terminal condition from which I am expected to die within six
20 months, even with available life-sustaining treatment provided in
21 accordance with prevailing standards of medical care:

22 _____ I request that all treatments other than those needed
23 to keep me comfortable be discontinued or withheld and
24 my physician allow me to die as gently as possible; OR

25 _____ I request that I be kept alive in this terminal
26 condition using available life-sustaining treatment.

27 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

1 If, in the judgment of my physician, I am suffering with an
2 irreversible condition so that I cannot care for myself or make
3 decisions for myself and am expected to die without life-sustaining
4 treatment provided in accordance with prevailing standards of care:

5 _____ I request that all treatments other than those needed
6 to keep me comfortable be discontinued or withheld and
7 my physician allow me to die as gently as possible;

8 OR

9 _____ I request that I be kept alive in this irreversible
10 condition using available life-sustaining treatment.

11 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

12 Additional requests: (After discussion with your physician,
13 you may wish to consider listing particular treatments in this
14 space that you do or do not want in specific circumstances, such as
15 artificial nutrition and fluids, intravenous antibiotics, etc. Be
16 sure to state whether you do or do not want the particular
17 treatment.)

18 _____
19 _____
20 _____

21 After signing this directive, if my representative or I elect
22 hospice care, I understand and agree that only those treatments
23 needed to keep me comfortable would be provided and I would not be
24 given available life-sustaining treatments.

25 If I do not have a Medical Power of Attorney, and I am unable
26 to make my wishes known, I designate the following person(s) to make
27 treatment decisions with my physician compatible with my personal

1 values:

2 1. _____

3 2. _____

4 (If a Medical Power of Attorney has been executed, then an
5 agent already has been named and you should not list additional
6 names in this document.)

7 If the above persons are not available, or if I have not
8 designated a spokesperson, I understand that a spokesperson will be
9 chosen for me following standards specified in the laws of Texas.
10 If, in the judgment of my physician, my death is imminent within
11 minutes to hours, even with the use of all available medical
12 treatment provided within the prevailing standard of care, I
13 acknowledge that all treatments may be withheld or removed except
14 those needed to maintain my comfort. I understand that under Texas
15 law this directive has no effect if I have been diagnosed as
16 pregnant. This directive will remain in effect until I revoke it.
17 No other person may do so.

18 Signed _____ Date _____ City, County, State of
19 Residence _____

20 Two competent adult witnesses must sign below, acknowledging
21 the signature of the declarant. The witness designated as Witness 1
22 may not be a person designated to make a treatment decision for the
23 patient and may not be related to the patient by blood or marriage.
24 This witness may not be entitled to any part of the estate and may
25 not have a claim against the estate of the patient. This witness
26 may not be the attending physician or an employee of the attending
27 physician. If this witness is an employee of a health care facility

1 in which the patient is being cared for, this witness may not be
2 involved in providing direct patient care to the patient. This
3 witness may not be an officer, director, partner, or business
4 office employee of a health care facility in which the patient is
5 being cared for or of any parent organization of the health care
6 facility.

7 Witness 1 _____ Witness 2 _____

8 Definitions:

9 "Artificial nutrition and hydration" means the provision of
10 nutrients or fluids by a tube inserted in a vein, under the skin in
11 the subcutaneous tissues, or in the stomach (gastrointestinal
12 tract).

13 "Irreversible condition" means a condition, injury, or
14 illness:

15 (1) that may be treated, but is never cured or
16 eliminated;

17 (2) that leaves a person unable to care for or make
18 decisions for the person's own self; and

19 (3) that, without life-sustaining treatment provided
20 in accordance with the prevailing standard of medical care, is
21 fatal.

22 Explanation: Many serious illnesses such as cancer, failure
23 of major organs (kidney, heart, liver, or lung), and serious brain
24 disease such as Alzheimer's dementia may be considered irreversible
25 early on. There is no cure, but the patient may be kept alive for
26 prolonged periods of time if the patient receives life-sustaining
27 treatments. Late in the course of the same illness, the disease may

1 be considered terminal when, even with treatment, the patient is
2 expected to die. You may wish to consider which burdens of
3 treatment you would be willing to accept in an effort to achieve a
4 particular outcome. This is a very personal decision that you may
5 wish to discuss with your physician, family, or other important
6 persons in your life.

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

16 "Terminal condition" means an incurable condition caused by
17 injury, disease, or illness that according to reasonable medical
18 judgment will produce death within six months, even with available
19 life-sustaining treatment provided in accordance with the
20 prevailing standard of medical care.

21 Explanation: Many serious illnesses may be considered
22 irreversible early in the course of the illness, but they may not be
23 considered terminal until the disease is fairly advanced. In
24 thinking about terminal illness and its treatment, you again may
25 wish to consider the relative benefits and burdens of treatment and
26 discuss your wishes with your physician, family, or other important
27 persons in your life.

1 SECTION 9. Section 166.046(b), Health and Safety Code, is
2 amended to read as follows:

3 (b) The patient or the person responsible for the health
4 care decisions of the individual who has made the decision
5 regarding the directive or treatment decision:

6 (1) may be given a written description of the ethics or
7 medical committee review process and any other policies and
8 procedures related to this section adopted by the health care
9 facility;

10 (2) shall be informed of the committee review process
11 not less than 48 hours before the meeting called to discuss the
12 patient's directive, unless the time period is waived by mutual
13 agreement;

14 (3) at the time of being so informed, shall be
15 provided:

16 (A) a copy of the appropriate statement set forth
17 in Section 166.052; and

18 (B) a copy of the registry list of health care
19 providers and referral groups that have volunteered their readiness
20 to consider accepting transfer or to assist in locating a provider
21 willing to accept transfer that is posted on the website maintained
22 by the department [~~Texas Health Care Information Council~~] under
23 Section 166.053; and

24 (4) is entitled to:

25 (A) attend the meeting; and

26 (B) receive a written explanation of the decision
27 reached during the review process.

1 SECTION 10. Sections 166.052(a) and (b), Health and Safety
2 Code, are amended to read as follows:

3 (a) In cases in which the attending physician refuses to
4 honor an advance directive or treatment decision requesting the
5 provision of life-sustaining treatment, the statement required by
6 Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~] shall be in
7 substantially the following form:

8 When There Is A Disagreement About Medical Treatment:

9 The Physician Recommends Against Life-Sustaining Treatment

10 That You Wish To Continue

11 You have been given this information because you have
12 requested life-sustaining treatment,* which the attending
13 physician believes is not appropriate. This information is being
14 provided to help you understand state law, your rights, and the
15 resources available to you in such circumstances. It outlines the
16 process for resolving disagreements about treatment among
17 patients, families, and physicians. It is based upon Section
18 166.046 of the Texas Advance Directives and Transferable Physician
19 Orders Act, codified in Chapter 166 of the Texas Health and Safety
20 Code.

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

26 You will receive notification of this review at least 48
27 hours before a meeting of the committee related to your case. You

1 are entitled to attend the meeting. With your agreement, the
2 meeting may be held sooner than 48 hours, if possible.

3 You are entitled to receive a written explanation of the
4 decision reached during the review process.

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

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

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

19 3. The patient will continue to be given life-sustaining
20 treatment until he or she can be transferred to a willing provider
21 for up to 10 days from the time you were given the committee's
22 written decision that life-sustaining treatment is not
23 appropriate.

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

26 5. If a provider cannot be found willing to give the
27 requested treatment within 10 days, life-sustaining treatment may

1 be withdrawn unless a court of law has granted an extension.

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

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

17 (b) In cases in which the attending physician refuses to
18 comply with an advance directive or treatment decision requesting
19 the withholding or withdrawal of life-sustaining treatment, the
20 statement required by Section 166.046(b)(3)(A) shall be in
21 substantially the following form:

22 When There Is A Disagreement About Medical Treatment:

23 The Physician Recommends Life-Sustaining Treatment

24 That You Wish To Stop

25 You have been given this information because you have
26 requested the withdrawal or withholding of life-sustaining
27 treatment* and the attending physician refuses to comply with that

1 request. The information is being provided to help you understand
2 state law, your rights, and the resources available to you in such
3 circumstances. It outlines the process for resolving disagreements
4 about treatment among patients, families, and physicians. It is
5 based upon Section 166.046 of the Texas Advance Directives and
6 Transferable Physician Orders Act, codified in Chapter 166 of the
7 Texas Health and Safety Code.

8 When an attending physician refuses to comply with an advance
9 directive or other request for withdrawal or withholding of
10 life-sustaining treatment for any reason, the case will be reviewed
11 by an ethics or medical committee. Life-sustaining treatment will
12 be provided through the review.

13 You will receive notification of this review at least 48
14 hours before a meeting of the committee related to your case. You
15 are entitled to attend the meeting. With your agreement, the
16 meeting may be held sooner than 48 hours, if possible.

17 You are entitled to receive a written explanation of the
18 decision reached during the review process.

19 If you or the attending physician do not agree with the
20 decision reached during the review process, and the attending
21 physician still refuses to comply with your request to withhold or
22 withdraw life-sustaining treatment, then the following procedure
23 will occur:

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

27 2. You are being given a list of health care providers and

1 referral groups that have volunteered their readiness to consider
2 accepting transfer, or to assist in locating a provider willing to
3 accept transfer, maintained by the Department of State Health
4 Services [~~Texas Health Care Information Council~~]. You may wish to
5 contact providers or referral groups on the list or others of your
6 choice to get help in arranging a transfer.

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

17 SECTION 11. Sections 166.053(a), (c), and (d), Health and
18 Safety Code, are amended to read as follows:

19 (a) The department [~~Texas Health Care Information Council~~]
20 shall maintain a registry listing the identity of and contact
21 information for health care providers and referral groups, situated
22 inside and outside this state, that have voluntarily notified the
23 department [~~council~~] they may consider accepting or may assist in
24 locating a provider willing to accept transfer of a patient under
25 Section 166.045, ~~[or]~~ 166.046, 166.213(d), or 166.214.

26 (c) The department [~~Texas Health Care Information Council~~]
27 shall post the current registry list on its website in a form

1 appropriate for easy comprehension by patients and persons
2 responsible for the health care decisions of patients and shall
3 provide a clearly identifiable link from its home page to the
4 registry page. The list shall separately indicate those providers
5 and groups that have indicated their interest in assisting the
6 transfer of:

7 (1) those patients on whose behalf life-sustaining
8 treatment is being sought;

9 (2) those patients on whose behalf the withholding or
10 withdrawal of life-sustaining treatment is being sought; and

11 (3) patients described in both Subdivisions (1) and
12 (2).

13 (d) The registry list described in this section shall
14 include the following disclaimer:

15 "This registry lists providers and groups that have indicated
16 to the Department of State Health Services [~~Texas Health Care~~
17 ~~Information Council~~] their interest in assisting the transfer of
18 patients in the circumstances described, and is provided for
19 information purposes only. Neither the Department of State Health
20 Services [~~Texas Health Care Information Council~~] nor the State of
21 Texas endorses or assumes any responsibility for any
22 representation, claim, or act of the listed providers or groups."

23 SECTION 12. Subchapter B, Chapter 157, Occupations Code, is
24 amended by adding Section 157.0575 to read as follows:

25 Sec. 157.0575. DELEGATION FOR EXECUTING TRANSFERABLE
26 PHYSICIAN ORDERS. (a) A physician may delegate to an advanced
27 practice nurse the execution of transferable physician orders under

1 Subchapter E, Chapter 166, Health and Safety Code.

2 (b) Pursuant to the physician's order and in accordance with
3 applicable facility policies or medical staff bylaws, the advanced
4 practice nurse may execute on behalf of a patient transferable
5 physician orders in accordance with Subchapter E, Chapter 166,
6 Health and Safety Code.

7 SECTION 13. The heading to Section 142.0145, Health and
8 Safety Code, is amended to read as follows:

9 Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE
10 DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

11 SECTION 14. Section 142.0145(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) The department shall assess an administrative penalty
14 against a home and community support services agency that violates
15 Section 166.004 or 166.204.

16 SECTION 15. The heading to Section 242.0663, Health and
17 Safety Code, is amended to read as follows:

18 Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE
19 DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

20 SECTION 16. Section 242.0663(a), Health and Safety Code, is
21 amended to read as follows:

22 (a) The department shall assess an administrative penalty
23 under this subchapter against an institution that violates Section
24 166.004 or 166.204.

25 SECTION 17. The heading to Section 247.0459, Health and
26 Safety Code, is amended to read as follows:

27 Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE

1 DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

2 SECTION 18. Section 247.0459(a), Health and Safety Code, is
3 amended to read as follows:

4 (a) The department shall assess an administrative penalty
5 against an assisted living facility that violates Section 166.004
6 or 166.204.

7 SECTION 19. The heading to Section 248.0545, Health and
8 Safety Code, is amended to read as follows:

9 Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE
10 DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

11 SECTION 20. Section 248.0545(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) The department shall assess an administrative penalty
14 against a special care facility that violates Section 166.004 or
15 166.204.

16 SECTION 21. Section 81.1011, Government Code, is amended to
17 read as follows:

18 Sec. 81.1011. EXCEPTION FOR CERTAIN LEGAL ASSISTANCE. (a)
19 Notwithstanding Section 81.101(a), the "practice of law" does not
20 include technical advice, consultation, and document completion
21 assistance provided by an employee or volunteer of an area agency on
22 aging affiliated with the [~~Texas~~] Department of Aging and
23 Disability Services [~~on Aging~~] who meets the requirements of
24 Subsection (b) if that advice, consultation, and assistance relates
25 to:

26 (1) a medical power of attorney or other advance
27 directive or transferable physician orders under Chapter 166,

1 Health and Safety Code; or

2 (2) a designation of guardian before need arises under
3 Section 679, Texas Probate Code.

4 (b) An employee or volunteer described by Subsection (a)
5 must:

6 (1) provide benefits counseling through an area agency
7 on aging system of access and assistance to agency clients;

8 (2) comply with rules adopted by the executive
9 commissioner of the Health and Human Services Commission [~~Texas~~
10 ~~Department on Aging~~] regarding qualifications, training
11 requirements, and other requirements for providing benefits
12 counseling services, including legal assistance and legal
13 awareness services;

14 (3) have received specific training in providing the
15 technical advice, consultation, and assistance described by
16 Subsection (a); and

17 (4) be certified by the [~~Texas~~] Department of Aging
18 and Disability Services [~~on Aging~~] as having met the requirements
19 of this subsection.

20 (c) The executive commissioner of the Health and Human
21 Services Commission [~~Texas Department on Aging~~] by rule shall
22 develop certification procedures by which the Department of Aging
23 and Disability Services [~~department~~] certifies that an employee or
24 volunteer described by Subsection (a) has met the requirements of
25 Subsections (b)(1), (2), and (3).

26 SECTION 22. (a) Not later than January 1, 2008, the
27 Department of State Health Services and the Department of Aging and

1 Disability Services shall develop the transferable physician
2 orders form required by Subchapter E, Chapter 166, Health and
3 Safety Code, as added by this Act.

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

8 (c) In developing the transferable physician orders form
9 required by Subchapter E, Chapter 166, Health and Safety Code, as
10 added by this Act, the Department of State Health Services and the
11 Department of Aging and Disability Services shall consider the
12 Physician Orders for Life-Sustaining Treatment (POLST) form
13 distributed by the Oregon Health and Science University's Center
14 for Ethics in Health Care.

15 SECTION 23. (a) Except as provided by Subsection (b), this
16 Act takes effect September 1, 2007.

17 (b) Sections 166.202, 166.204, 166.205, 166.206, and
18 166.207, Health and Safety Code, as added by this Act, take effect
19 May 1, 2008.