

By: Deuell

S.B. No. 439

A BILL TO BE ENTITLED

AN ACT

relating to advance directives or health care or treatment decisions made by or on behalf of patients.

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

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

SECTION 2. The purpose of this Act is to protect the right of patients and their families to decide whether and under what circumstances to choose or reject life-sustaining treatment. This Act amends the applicable provisions of the Advance Directives Act (Chapter 166, Health and Safety Code) to ensure that, when an attending physician is unwilling to respect a patient's advance directive or a patient's or family's decision to choose the treatment necessary to prevent the patient's death, life-sustaining medical treatment will be provided until the patient can be transferred to a health care provider willing to honor the directive or treatment decision.

SECTION 3. Section 166.045(c), Health and Safety Code, is amended to read as follows:

(c) If an attending physician refuses to comply with a directive or treatment decision requesting the provision of life-sustaining treatment to a patient and either the attending physician does not wish to follow the procedure established under Section 166.046 or the procedure is not applicable, the appropriate

1 life-sustaining treatment shall be provided to the patient [~~, but~~
2 ~~only~~] until [~~a reasonable opportunity has been afforded for the~~
3 ~~transfer of~~] the patient is transferred to another physician or
4 health care facility willing to comply with the directive or
5 treatment decision.

6 SECTION 4. Sections 166.046(a) and (e), Health and Safety
7 Code, are amended to read as follows:

8 (a) If an attending physician refuses to honor a patient's
9 advance directive or a health care or treatment decision made by or
10 on behalf of a patient, other than a directive or decision to
11 provide artificial nutrition and hydration to the patient, the
12 physician's refusal shall be reviewed by an ethics or medical
13 committee. The attending physician may not be a member of that
14 committee. The patient shall be given life-sustaining treatment
15 during the review.

16 (e) If the patient or the person responsible for the health
17 care decisions of the patient is requesting life-sustaining
18 treatment that the attending physician has decided and the review
19 process has affirmed is inappropriate treatment, the patient shall
20 be given available life-sustaining treatment pending transfer
21 under Subsection (d). The patient is responsible for any costs
22 incurred in transferring the patient to another facility. [~~The~~
23 ~~physician and the health care facility are not obligated to provide~~
24 ~~life-sustaining treatment after the 10th day after the written~~
25 ~~decision required under Subsection (b) is provided to the patient~~
26 ~~or the person responsible for the health care decisions of the~~
27 ~~patient unless ordered to do so under Subsection (g).~~]

1 SECTION 5. Section 166.051, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
4 This subchapter does not impair or supersede any legal right or
5 responsibility a person may have to effect the withholding or
6 withdrawal of life-sustaining treatment in a lawful manner,
7 provided that if an attending physician or health care facility is
8 unwilling to honor a patient's advance directive or a treatment
9 decision to provide life-sustaining treatment, life-sustaining
10 treatment must [~~is required to~~] be provided to the patient in
11 accordance with this chapter [~~, but only until a reasonable~~
12 ~~opportunity has been afforded for transfer of the patient to~~
13 ~~another physician or health care facility willing to comply with~~
14 ~~the advance directive or treatment decision~~].

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

17 (a) In cases in which the attending physician refuses to
18 honor an advance directive or treatment decision requesting the
19 provision of life-sustaining treatment, other than a directive or
20 decision to provide artificial nutrition and hydration, the
21 statement required by Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~]
22 shall be in substantially the following form:

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

26 You have been given this information because you have
27 requested life-sustaining treatment,* other than artificial

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

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

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

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

21 If after this review process both the attending physician and
22 the ethics or medical committee conclude that life-sustaining
23 treatment, other than artificial nutrition and hydration, is
24 inappropriate and yet you continue to request such treatment, then
25 the following procedure will occur:

26 1. The physician, with the help of the health care facility,
27 will assist you in trying to find a physician and facility willing

1 to provide the requested treatment.

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

9 3. The patient will [~~continue to~~] be given life-sustaining
10 treatment until he or she can be transferred to a willing provider
11 [~~for up to 10 days from the time you were given the committee's~~
12 ~~written decision that life-sustaining treatment is not~~
13 ~~appropriate~~].

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

16 [~~5. If a provider cannot be found willing to give the~~
17 ~~requested treatment within 10 days, life-sustaining treatment may~~
18 ~~be withdrawn unless a court of law has granted an extension.~~

19 [~~6. You may ask the appropriate district or county court to~~
20 ~~extend the 10-day period if the court finds that there is a~~
21 ~~reasonable expectation that a physician or health care facility~~
22 ~~willing to provide life-sustaining treatment will be found if the~~
23 ~~extension is granted.~~]

24 *"Life-sustaining treatment" means treatment that, based on
25 reasonable medical judgment, sustains the life of a patient and
26 without which the patient will die. The term includes both
27 life-sustaining medications and artificial life support, such as

1 mechanical breathing machines, kidney dialysis treatment, and
2 artificial nutrition and hydration. The term does not include the
3 administration of pain management medication or the performance of
4 a medical procedure considered to be necessary to provide comfort
5 care, or any other medical care provided to alleviate a patient's
6 pain.

7 SECTION 7. Sections 166.046(f) and (g), Health and Safety
8 Code, are repealed.

9 SECTION 8. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2007.