

BILL ANALYSIS

Senate Research Center
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H.B. 2585
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Advance medical directives (AMD) are documents, such as do not resuscitate orders and physician/medical orders for life sustaining treatment, that allow individuals to appoint someone to make medical treatment decisions for them if they are incapacitated. AMDs allow individuals to pre-determine how they will be treated, or not, if they become incapacitated and cannot make medical decisions for themselves. Current law requires manual signatures in order for AMDs to be considered valid and enforceable, and witness signatures are the only means of validating the authenticity of an individual's signature on an AMD.

This bill updates Texas law relating to the execution, authentication, and enforcement of AMDs to address the current state of technology and current best practices applicable to AMDs by clearly and unambiguously stating that an electronic or digital signature on an AMD is acceptable, and by allowing such signatures to be authenticated by witnesses or a notary public. By permitting individuals to electronically or digitally sign AMDs and have their signatures witnessed or notarized, the bill makes it easier for all individuals to have AMDs and moves the Texas health care system closer to becoming a paperless system.

H.B. 2585 amends current law relating to digital or electronic signatures and witness signatures on advance directives.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 166.011, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 166.002, Health and Safety Code, by adding Subdivisions (5-a) and (5-b), to define "digital signature" and "electronic signature."

SECTION 2. Amends Subchapter A, Chapter 166, Health and Safety Code, by adding Section 166.011, as follows:

Sec. 166.011. **DIGITAL OR ELECTRONIC SIGNATURE.** (a) Authorizes the declarant, witness, or notary public, for an advance directive in which a signature by a declarant, witness, or notary public is required or used, to sign the directive or a written revocation of the directive using:

- (1) a digital signature that uses an algorithm approved by the Texas Department of Health (TDH); is unique to the person using it; is capable of verification; is under the sole control of the person using it; is linked to data in a manner that invalidates the digital signature if the data is changed; persists with the document and not by association in separate files; and is bound to a digital certificate; or

(2) an electronic signature that is capable of verification; is under the sole control of the person using it; is linked to data in a manner that invalidates the electronic signature if the data is changed; and persists with the document and not by association in separate files.

(b) Authorizes TDH, in approving an algorithm for purposes of Subsection (a)(1)(A) (relating to using a digital signature that uses an algorithm approved by TDH is unique to the person using it), to consider an algorithm approved by the National Institute of Standards and Technology.

(c) Requires the executive commissioner of the Health and Human Services Commission by rule to modify the advance directive forms required under this chapter as necessary to provide for the use of a digital or electronic signature that complies with the requirements of this section.

SECTION 3. Amends Section 166.032, Health and Safety Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires the declarant, except as provided by Subsection (b-1), to sign the directive in the presence of two witnesses who qualify under Section 166.003 (Witnesses), at least one of whom is required to be a witness who qualifies under Section 166.003(2) (relating to requiring the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed by certain people). Makes a nonsubstantive change.

(b-1) Authorizes the declarant, in lieu of signing in the presence of witnesses, to sign the directive and have the signature acknowledged before a notary public.

SECTION 4. Amends Section 166.036(a), Health and Safety Code, to provide that a written directive executed under Section 166.033 or 166.035 (Execution of Directive on Behalf of Patient Younger Than 18 Years of Age) is effective without regard to whether the document has been notarized, except as provided by Section 166.032(b-1).

SECTION 5. Amends Sections 166.082(b) and (c), Health and Safety Code, as follows:

(b) Requires the declarant to sign the out-of-hospital do not resuscitate (DNR) order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.033(2), except as provided by this subsection. Authorizes the declarant, in lieu of signing in the presence of witnesses, to sign the out-of-hospital DNR order and have the signature acknowledged before a notary public.

(c) Requires the physician to sign the order in lieu of the person signing under Subsection (b) and authorizes the physician to use a digital or electronic signature authorized under Section 166.011.

SECTION 6. Amends Section 166.083(b), Health and Safety Code, to require the standard form of an out-of-hospital DNR order specified by the Texas Board of Health (board), at a minimum, to contain certain information, including places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician.

SECTION 7. Amends Section 166.089(d), Health and Safety Code, to require the responding health care professionals to determine that the out-of-hospital DNR order form appears to be valid in that it includes certain information, including written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order, and the signature or digital or electronic signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

SECTION 8. Amends Section 166.154, Health and Safety Code, as follows:

Sec. 166.154. New heading: EXECUTION. (a) Requires the medical power of attorney, to be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom is required to be a witness who qualifies under Section 166.003(2), except as provided by Subsection (b).

(b) Authorizes the principal, in lieu of signing in the presence of the witnesses, to sign the medical power of attorney and have the signature acknowledged before a notary public.

(c) Redesignates Subsection (b) as Subsection (c). Authorizes the person signing for a principal who is physically unable to sign to use a digital or electronic signature authorized under Section 166.011.

SECTION 9. (a) Requires the executive commissioner of the Health and Human Services Commission, not later than December 1, 2009, to adopt the rules and modify the forms as necessary to comply with the changes in law made by this Act.

(b) Prohibits a person from signing an advance directive or a written revocation of an advance directive using a digital or electronic signature before January 1, 2010, notwithstanding Chapter 166 (Advance Directives), Health and Safety Code, as amended by this Act.

SECTION 10. Effective date: September 1, 2009.