

By: Coleman

H.B. No. 2964

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to advance directives and health care and treatment  
3 decisions.

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

5 SECTION 1. Sections 166.046(a), (b) and (e), Health and  
6 Safety Code, are amended to read as follows:

7 Sec. 166.046. PROCEDURE IF NOT EFFECTUATING A DIRECTIVE OR  
8 TREATMENT DECISION. (a) If an attending physician refuses to  
9 honor a patient's advance directive or a health care or treatment  
10 decision made by or on behalf of a patient, the physician's refusal  
11 shall be reviewed by an ethics or medical committee. The attending  
12 physician may not be a member of that committee. The patient shall  
13 be given life-sustaining treatment during the review. If  
14 artificial nutrition and hydration are the only life-sustaining  
15 treatment being provided to a patient with a terminal condition,  
16 the process established under this section may not be invoked  
17 unless reasonable medical evidence indicates the provision of  
18 artificial nutrition and hydration may hasten the patient's death  
19 or exacerbate other medical problems and the risk of serious  
20 medical pain or discomfort that cannot be alleviated based on  
21 reasonable medical judgment outweighs the benefit of continued  
22 artificial nutrition and hydration.

23 (b) The patient or the person responsible for the health  
24 care decisions of the individual who has made the decision

1 regarding the directive or treatment decision:

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

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

10 (3) at the time of being so informed, shall be  
11 provided:

12 (A) a copy of the appropriate statement set forth  
13 in Section 166.052; ~~and~~

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

20 (C) a patient liaison, appointed by the ethics of  
21 medical committee, familiar with end-of-life issues and hospice  
22 care options to assist the person responsible for the health care  
23 decisions of the individual throughout the process described by  
24 this section.

25 (4) is entitled to:

26 (A) attend the meeting; and

27 (B) receive a written explanation of the decision

1 reached during the review process.

2 (e) If the patient or the person responsible for the health  
3 care decisions of the patient is requesting life-sustaining  
4 treatment that the attending physician has decided and the review  
5 process has affirmed is inappropriate treatment, the patient shall  
6 be given available life-sustaining treatment pending transfer  
7 under Subsection (d). The patient is responsible for any costs  
8 incurred in transferring the patient to another facility. The  
9 physician and the health care facility are not obligated to provide  
10 life-sustaining treatment, except for the provision of artificial  
11 nutrition and hydration, unless providing the artificial nutrition  
12 and hydration would hasten death or seriously exacerbate other  
13 major medical conditions and the risk of serious medical pain or  
14 discomfort that cannot be alleviated based on reasonable medical  
15 judgment outweighs the benefit of continued artificial nutrition  
16 and hydration, after the 14th calendar [~~10th~~] day after the written  
17 decision required under Subsection (b) is provided to the patient  
18 or the person responsible for the health care decisions of the  
19 patient.

20 SECTION 2. Sections 166.052(a) and (b), Health and Safety  
21 Code, are amended to read as follows: (a) In cases in which the  
22 attending physician refuses to honor an advance directive or  
23 treatment decision requesting the provision of life-sustaining  
24 treatment, the statement required by 166.046(b)(2)(A) shall be in  
25 substantially the following form:

26 You have been given this information because you have requested  
27 life-sustaining treatment,\* which the attending physician believes



1 will assist you in trying to find a physician and facility willing  
2 to provide the requested treatment.

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

10         3. The patient will continue to be given life-sustaining  
11 treatment, including artificial nutrition and hydration unless  
12 reasonable medical evidence indicates the provision of artificial  
13 nutrition and hydration may hasten the patient's death or  
14 exacerbate other medical problems and the risk of serious medical  
15 pain or discomfort that cannot be alleviated based on reasonable  
16 medical judgment outweighs the benefit of continued artificial  
17 nutrition and hydration, until he or she can be transferred to a  
18 willing provider for up to 14 calendar [~~10~~] days from the time you  
19 were given the committee's written decision that life-sustaining  
20 treatment is not appropriate.

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

23         5. If a provider cannot be found willing to give the  
24 requested treatment within 14 calendar [~~10~~] days, life-sustaining  
25 treatment may be withdrawn unless a court of law has granted an  
26 extension.

27         6. You may ask the appropriate district or county court to

1 extend the 14-day [~~10-day~~] period if the court finds that there is a  
2 reasonable expectation that a physician or health care facility  
3 willing to provide life-sustaining treatment will be found if the  
4 extension is granted.

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

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

20       You have been given this information because you have  
21 requested the withdrawal or withholding of life-sustaining  
22 treatment\* and the attending physician refuses to comply with that  
23 request. The information is being provided to help you understand  
24 state law, your rights, and the resources available to you in such  
25 circumstances. It outlines the process for resolving disagreements  
26 about treatment among patients, families, and physicians. It is  
27 based upon Section 166.046 of the Texas Advance Directives Act,

1 codified in Chapter 166 of the Texas Health and Safety Code.

2         When There Is A Disagreement About Medical Treatment: The  
3         Physician Recommends Life-Sustaining Treatment That You Wish To  
4                                                 Stop

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

10         You will receive notification of this review at least 48  
11 hours before a meeting of the committee related to your case. You  
12 are entitled to attend the meeting. With your agreement, the  
13 meeting may be held sooner than 48 hours, if possible. The  
14 committee will appoint a patient liaison to assist you through this  
15 process.

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

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

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

26             2. You are being given a list of health care providers and  
27 referral groups that have volunteered their readiness to consider

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

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

16       SECTION 3. An advance directive form executed under Chapter  
17 166, Health and Safety Code, before the effective date of this Act  
18 is valid and shall be honored as if the form were executed on or  
19 after the effective date of this Act.

20       SECTION 4. This Act takes effect September 1, 2009.