

By: Hughes

H.B. No. 3520

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 2011.

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, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) If an attending physician refuses to comply with a directive or treatment decision to provide life-sustaining treatment to a patient and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall

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

5 (c-1) Notwithstanding Subsection (c), a physician, health
6 care facility, or health care professional is not required to
7 continue providing life-sustaining treatment to the patient if:

8 (1) the physician, health care facility, or health
9 care professional has accurately informed the patient or the person
10 responsible for the health care decisions of a patient of a
11 reasonably available physician or appropriate health care facility
12 willing and able to accept transfer of the patient and to comply
13 with the directive or treatment decision; and

14 (2) not later than the fifth day after the date the
15 patient or person is informed of a reasonably available physician
16 or facility under Subdivision (1), the patient or person
17 responsible for the health care decisions of the patient refuses to
18 authorize transfer of the patient to a reasonably available
19 physician described by Subdivision (1).

20 SECTION 4. Section 166.046, Health and Safety Code, is
21 amended by amending Subsections(a) and (e) and adding subsection
22 (e-1) to read as follows:

23 (a) If an attending physician refuses to honor a patient's
24 advance directive or a health care or treatment decision made by or
25 on behalf of a patient, other than a directive or decision to
26 provide artificial nutrition and hydration to the patient, the
27 physician's refusal shall be reviewed by an ethics or medical

committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.

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

(e-1) Notwithstanding Subsection (e), the physician or health care facility is not required to continue providing life-sustaining treatment to the patient if:

(1) the physician or health care facility has accurately informed the patient or the person responsible for the health care decisions of the patient of a reasonably available physician or appropriate health care facility willing and able to accept transfer of the patient and to comply with the directive or treatment decision; and

(2) not later than the fifth day after the date the patient or person is informed of a reasonably available physician or facility under Subdivision (1), the patient or person

1 responsible for the health care decisions of the patient refuses to
2 authorize transfer of the patient to a reasonably available
3 physician described by Subdivision (1).

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

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

18 SECTION 6. Sections 166.052(a) and (b), Health and Safety
19 Code, are amended to read as follows:

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

26 When There Is A Disagreement About Medical Treatment: The
27 Physician Recommends Against Life-Sustaining Treatment That You

Wish To Continue

You have been given this information because you have requested life-sustaining treatment,* other than artificial nutrition and hydration, which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

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

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

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

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment, other than artificial nutrition and hydration, is inappropriate and yet you continue to request such treatment, then

the following procedure will occur:

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

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

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

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

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

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

*"Life-sustaining treatment" means treatment that, based on

1 reasonable medical judgment, sustains the life of a patient and
2 without which the patient will die. The term includes both
3 life-sustaining medications and artificial life support, such as
4 mechanical breathing machines, kidney dialysis treatment, and
5 artificial nutrition and hydration. The term does not include the
6 administration of pain management medication or the performance of
7 a medical procedure considered to be necessary to provide comfort
8 care, or any other medical care provided to alleviate a patient's
9 pain.

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

15 When There Is A Disagreement About Medical Treatment: The
16 Physician Recommends Life-Sustaining Treatment That You Wish To
17 Stop

18 You have been given this information because you have
19 requested the withdrawal or withholding of life-sustaining
20 treatment*, other than artificial nutrition and hydration, and the
21 attending physician refuses to comply with that request. The
22 information is being provided to help you understand state law,
23 your rights, and the resources available to you in such
24 circumstances. It outlines the process for resolving disagreements
25 about treatment among patients, families, and physicians. It is
26 based upon Section 166.046 of the Texas Advance Directives Act,
27 codified in Chapter 166 of the Texas Health and Safety Code.

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

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

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

12 If you or the attending physician do not agree with the
13 decision reached during the review process, and the attending
14 physician still refuses to comply with your request to withhold or
15 withdraw life-sustaining treatment, then the following procedure
16 will occur:

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

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

27 *"Life-sustaining treatment" means treatment that, based on

1 reasonable medical judgment, sustains the life of a patient and
2 without which the patient will die. The term includes both
3 life-sustaining medications and artificial life support, such as
4 mechanical breathing machines, kidney dialysis treatment, and
5 artificial nutrition and hydration. The term does not include the
6 administration of pain management medication or the performance of
7 a medical procedure considered to be necessary to provide comfort
8 care, or any other medical care provided to alleviate a patient's
9 pain.

10 SECTION 7. Section 25.0021(b), Government Code, is amended
11 to read as follows:

12 (b) A statutory probate court as that term is defined in
13 Section 3(ii), Texas Probate Code, has:

14 (1) the general jurisdiction of a probate court as
15 provided by the Texas Probate Code; and

16 (2) the jurisdiction provided by law for a county
17 court to hear and determine actions, cases, matters, or proceedings
18 instituted under:

19 (A) Section [~~166.046~~] 192.027, 193.007,
20 552.015, 552.019, 711.004, or 714.003, Health and Safety Code;

21 (B) Chapter 462, Health and Safety Code; or

22 (C) Subtitle C or D, Title 7, Health and Safety
23 Code.

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

26 SECTION 9. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.