

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. Section 166.002, Health and Safety Code, is
6 amended by amending Subdivisions (2) and (10) and adding
7 Subdivision (16) to read as follows:

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

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

22 (16) "Surrogate" means a legal guardian, an agent
23 under a medical power of attorney, or a person authorized under
24 Section 166.039(b) to make a health care or treatment decision for

1 an incompetent patient under this chapter.

2 SECTION 2. Subchapter A, Chapter 166, Health and Safety
3 Code, is amended by adding Section 166.012 to read as follows:

4 Sec. 166.012. STATEMENT RELATING TO
5 DO-NOT-ATTEMPT-RESUSCITATION ORDERS. (a) In this section,
6 "do-not-attempt-resuscitation order" or "DNAR order" means an
7 order instructing health care professionals not to attempt
8 cardiopulmonary resuscitation of the patient if circulatory or
9 respiratory function ceases.

10 (b) Upon admission, a health care facility shall provide a
11 patient or surrogate written notice of the facility's policies
12 regarding the rights of the patient or surrogate under this
13 section.

14 (c) Before placing a do-not-attempt-resuscitation (DNAR)
15 order in a patient's medical record, the physician or the facility's
16 personnel shall inform the patient or, if the patient is
17 incompetent, make a reasonably diligent effort to contact or cause
18 to be contacted the surrogate. The facility shall establish a
19 policy regarding the notification required under this section. The
20 policy must authorize the notification to be given verbally by a
21 physician or facility personnel.

22 (d) The DNAR order takes effect at the time it is written in
23 the patient's chart or otherwise placed in the patient's medical
24 record.

25 (e) If the patient or surrogate disagrees with the DNAR
26 order being placed in or removed from the medical record, the
27 patient or surrogate may request in writing and is entitled to a

1 consultation or a review of the disagreement by the ethics or
2 medical committee in the manner described by Section 166.046, with
3 the patient or surrogate afforded all rights provided to the
4 surrogate under that section, and with the physician afforded all
5 protections from liability provided under Section 166.045(d). The
6 patient or surrogate may discontinue the process initiated under
7 Section 166.046 by providing written notice to the ethics or
8 medical committee.

9 (f) A DNAR order in the patient's medical record at the time
10 a consultation or review is requested under Subsection (e) must be
11 removed from the patient's medical record at that time. A DNAR
12 order may not be placed in the patient's medical record until the
13 process initiated under Section 166.046 is concluded or
14 discontinued at the request of the patient or surrogate.

15 (g) Subsection (c) does not apply to a DNAR order placed in
16 the medical record of a patient:

17 (1) whose death, based on reasonable medical judgment,
18 is imminent despite attempted resuscitation;

19 (2) for whom, based on reasonable medical judgment,
20 resuscitation would be medically ineffective and there is
21 insufficient time to contact the surrogate; or

22 (3) for whom the DNAR order is consistent with a
23 patient's or surrogate's request or a patient's advance directive to
24 not attempt resuscitation.

25 (h) Subsection (e) does not apply to a DNAR order placed in
26 the medical record of a patient with respect to whom, based on
27 reasonable medical judgment, death is imminent and resuscitation

1 would be medically ineffective.

2 (i) This section does not create a cause of action or
3 liability against a physician, health professional acting under the
4 direction of a physician, or health care facility.

5 (j) A physician, health professional acting under the
6 direction of a physician, or health care facility is not civilly or
7 criminally liable or subject to review or disciplinary action by
8 the appropriate licensing authority if the actor has complied with
9 the procedures under this section and Section 166.046.

10 (k) This section does not affect the immunity from liability
11 under Section 74.151, Civil Practice and Remedies Code.

12 (l) This section does not apply to an assisted living
13 facility licensed under Chapter 247.

14 SECTION 3. Section 166.033, Health and Safety Code, is
15 amended to read as follows:

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

18 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

19 Instructions for completing this document:

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

1 terminal condition from which I am expected to die within six
2 months, even with available life-sustaining treatment provided in
3 accordance with prevailing standards of medical care:

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

7 OR

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

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

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

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

18 OR

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

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

22 Additional requests: (After discussion with your physician,
23 you may wish to consider listing particular treatments in this
24 space that you do or do not want in specific circumstances, such as
25 artificially administered [~~artificial~~] nutrition and hydration
26 [~~fluids~~], intravenous antibiotics, etc. Be sure to state whether
27 you do or do not want the particular treatment.)

1 _____
2 _____
3 _____

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

8 If I do not have a Medical Power of Attorney, and I am unable
9 to make my wishes known, I designate the following person(s) to make
10 health care or treatment decisions with my physician compatible
11 with my personal values:

- 12 1. _____
13 2. _____

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

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

1 Signed _____ Date _____ City, County, State of
2 Residence _____

3 Two competent adult witnesses must sign below, acknowledging
4 the signature of the declarant. The witness designated as Witness 1
5 may not be a person designated to make a health care or treatment
6 decision for the patient and may not be related to the patient by
7 blood or marriage. This witness may not be entitled to any part of
8 the estate and may not have a claim against the estate of the
9 patient. This witness may not be the attending physician or an
10 employee of the attending physician. If this witness is an employee
11 of a health care facility in which the patient is being cared for,
12 this witness may not be involved in providing direct patient care to
13 the patient. This witness may not be an officer, director, partner,
14 or business office employee of a health care facility in which the
15 patient is being cared for or of any parent organization of the
16 health care facility.

17 Witness 1 _____ Witness 2 _____

18 Definitions:

19 "Artificially administered [~~Artificial~~] nutrition and
20 hydration" means the provision of nutrients or fluids by a tube
21 inserted in a vein, under the skin in the subcutaneous tissues, or
22 in the stomach (gastrointestinal tract).

23 "Irreversible condition" means a condition, injury, or
24 illness:

25 (1) that may be treated, but is never cured or
26 eliminated;

27 (2) that leaves a person unable to care for or make

1 decisions for the person's own self; and

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

5 Explanation: Many serious illnesses such as cancer, failure
6 of major organs (kidney, heart, liver, or lung), and serious brain
7 disease such as Alzheimer's dementia may be considered irreversible
8 early on. There is no cure, but the patient may be kept alive for
9 prolonged periods of time if the patient receives life-sustaining
10 treatments. Late in the course of the same illness, the disease may
11 be considered terminal when, even with treatment, the patient is
12 expected to die. You may wish to consider which burdens of
13 treatment you would be willing to accept in an effort to achieve a
14 particular outcome. This is a very personal decision that you may
15 wish to discuss with your physician, family, or other important
16 persons in your life.

17 "Life-sustaining treatment" means treatment that, based on
18 reasonable medical judgment, sustains the life of a patient and
19 without which the patient will die. The term includes both
20 life-sustaining medications and artificial life support such as
21 mechanical breathing machines, kidney dialysis treatment, and
22 artificially administered nutrition and ~~[artificial]~~ hydration
23 ~~[and nutrition]~~. The term does not include the administration of
24 pain management medication, the performance of a medical procedure
25 necessary to provide comfort care, or any other medical care
26 provided to alleviate a patient's pain.

27 "Terminal condition" means an incurable condition caused by

1 injury, disease, or illness that according to reasonable medical
2 judgment will produce death within six months, even with available
3 life-sustaining treatment provided in accordance with the
4 prevailing standard of medical care.

5 Explanation: Many serious illnesses may be considered
6 irreversible early in the course of the illness, but they may not be
7 considered terminal until the disease is fairly advanced. In
8 thinking about terminal illness and its treatment, you again may
9 wish to consider the relative benefits and burdens of treatment and
10 discuss your wishes with your physician, family, or other important
11 persons in your life.

12 SECTION 4. Section 166.039, Health and Safety Code, is
13 amended by adding Subsections (a-1) and (b-1) and amending
14 Subsections (e) and (f) to read as follows:

15 (a-1) In making the decision described by Subsection (a),
16 the attending physician may consult with a physician who previously
17 treated the patient if the previous physician:

18 (1) is known and available, regardless of whether the
19 previous physician has discontinued providing care for the patient
20 or does not have privileges at the treating facility;

21 (2) had a conversation with the patient on end-of-life
22 issues at a time when the patient was competent and capable of
23 communication; and

24 (3) documented the conversation described by
25 Subdivision (2) in the patient's medical record.

26 (b-1) The attending physician and the health care
27 facility's personnel shall make a reasonably diligent effort to

1 contact or cause to be contacted the persons listed in Subsection
2 (b) in the order of priority under Subsection (b) until one of the
3 persons is contacted or the list is exhausted regarding making a
4 health care or treatment decision for the patient.

5 (e) If the patient does not have a legal guardian or agent
6 under a medical power of attorney and a person listed in Subsection
7 (b) is not available, a health care or treatment decision made under
8 Subsection (b) must be concurred with [~~in~~] by another physician who
9 is not involved in the treatment of the patient or who is a
10 representative of an ethics or medical committee of the health care
11 facility in which the person is a patient.

12 (f) The fact that an adult [~~qualified~~] patient has not
13 executed or issued a directive does not create a presumption
14 regarding the provision, withholding, or withdrawal of [~~that the~~
15 ~~patient does not want a treatment decision to be made to withhold or~~
16 ~~withdraw~~] life-sustaining treatment.

17 SECTION 5. Subsection (c), Section 166.045, Health and
18 Safety Code, is amended to read as follows:

19 (c) If an attending physician disagrees with and refuses to
20 comply with a patient's directive or a health care or treatment
21 decision of a patient or of a surrogate made on behalf of an
22 incompetent patient, and the attending physician does not wish to
23 follow the procedure established under Section 166.046,
24 life-sustaining treatment shall be provided to the patient, but
25 only until a reasonable opportunity has been afforded for the
26 transfer of the patient to another physician or health care
27 facility willing to comply with the health care [~~directive~~] or

1 treatment decision.

2 SECTION 6. The heading to Section 166.046, Health and
3 Safety Code, is amended to read as follows:

4 Sec. 166.046. PROCEDURE IF PHYSICIAN DISAGREES WITH AND
5 REFUSES TO COMPLY WITH HEALTH CARE [~~NOT EFFECTUATING A DIRECTIVE~~]
6 OR TREATMENT DECISION.

7 SECTION 7. Section 166.046, Health and Safety Code, is
8 amended by amending Subsections (a), (b), (c), (d), (e), (e-1),
9 (g), and (h) and adding Subsections (a-1), (a-2), (a-3), (a-4),
10 (a-5), (a-6), (a-7), (a-8), and (b-1) to read as follows:

11 (a) If an attending physician disagrees with and refuses to
12 comply with [~~honor~~] a patient's advance directive or a health care
13 or treatment decision [~~made by or on behalf~~] of a patient or of a
14 surrogate made on behalf of an incompetent patient, the
15 disagreement and the physician's refusal shall be reviewed by an
16 ethics or medical committee under this section. The ethics or
17 medical committee of a facility other than a nursing home licensed
18 under Chapter 242 may not include any health care provider involved
19 in the direct care of a patient whose treatment the committee
20 reviews or a subcommittee of such an ethics or medical committee.

21 (a-1) If the patient has been diagnosed with a terminal
22 condition, the ethics or medical committee shall determine if,
23 based on reasonable medical judgment, the treatment requested by
24 the patient or, if the patient is incompetent, by the surrogate
25 would:

26 (1) hasten the patient's death;

27 (2) seriously exacerbate other major medical problems

1 not outweighed by the benefit of the provision of the treatment;

2 (3) result in substantial irremediable physical pain
3 or discomfort not outweighed by the benefit of the provision of the
4 treatment; or

5 (4) be medically ineffective in prolonging the
6 patient's life.

7 (a-2) If the patient has been diagnosed with an irreversible
8 nonterminal condition, the ethics or medical committee may sustain
9 the decision to withdraw life-sustaining treatment requested by the
10 patient or, if the patient is incompetent, by the surrogate only if,
11 based on reasonable medical judgment, the treatment would:

12 (1) threaten the patient's life;

13 (2) seriously exacerbate other major medical problems
14 not outweighed by the benefit of the provision of the treatment;

15 (3) result in substantial irremediable physical pain
16 or discomfort not outweighed by the benefit of the provision of the
17 treatment; or

18 (4) be medically ineffective in prolonging the
19 patient's life.

20 (a-3) In all deliberations under this section, the ethics or
21 medical committee should strive to honor the values of each unique
22 patient. All patients will be treated equally without regard to
23 permanent physical or mental disabilities, age, gender, religion,
24 ethnic background, or financial or insurance status. The committee
25 should make the same decision about whether or not a requested
26 treatment is medically appropriate for individuals with or without
27 a permanent disability, advanced age, gender, religious or cultural

1 differences, or financial circumstances.

2 (a-4) The fact that life-sustaining treatment is delivered
3 in an intensive care unit is not itself sufficient to justify the
4 refusal to provide that treatment. This section does not authorize
5 withholding or withdrawing pain management medication, medical
6 procedures considered necessary to provide comfort care, or any
7 other medical care provided to alleviate a patient's pain.

8 (a-5) [~~The attending physician may not be a member of that~~
9 ~~committee.~~] The patient shall be given life-sustaining treatment
10 pending [during] the ethics or medical committee's review.

11 (a-6) When an ethics or medical committee review has been
12 initiated under this chapter, the ethics or medical committee
13 shall:

14 (1) inform the patient or surrogate that the patient
15 or surrogate may discontinue the process under this section by
16 providing written notice to the ethics or medical committee;

17 (2) appoint a patient liaison familiar with
18 end-of-life issues and hospice care options to assist the patient
19 or surrogate throughout the process described by this section; and

20 (3) appoint one or more representatives of the ethics
21 or medical committee to conduct an advisory ethics consultation
22 with the patient or surrogate, the outcome of which must be
23 documented in the patient's medical record by a representative of
24 the committee.

25 (a-7) If a disagreement over a health care or treatment
26 decision persists following the consultation described in
27 Subsection (a-6)(3), the ethics or medical committee shall hold a

1 meeting to review the disagreement.

2 (a-8) The ethics or medical committee in holding a review
3 required under this section, including a review following a
4 consultation described by Subsection (a-6)(3), shall advise the
5 patient or surrogate that the patient's attending physician may
6 present medical facts at the meeting. The patient's attending
7 physician may attend and present facts but may not participate as a
8 member of the committee in the case being evaluated.

9 (b) When a meeting of the ethics or medical committee is
10 required under this section [~~The patient or the person responsible~~
11 ~~for the health care decisions of the individual who has made the~~
12 ~~decision regarding the directive or treatment decision~~]:

13 (1) not later than the seventh calendar day before the
14 scheduled date of the meeting required under this section, unless
15 the time period is waived by mutual agreement, the committee shall
16 provide to the patient or surrogate:

17 (A) [~~may be given~~] a written description of the
18 ethics or medical committee review process and any other policies
19 and procedures related to this section adopted by the health care
20 facility;

21 (B) notice that the patient or surrogate is
22 entitled to receive the continued assistance of a patient liaison
23 to assist the patient or surrogate throughout the process described
24 in this section;

25 (C) notice that the patient or surrogate may seek
26 a second opinion at the patient's or surrogate's expense from other
27 medical professionals regarding the patient's medical status and

1 treatment requirements and communicate the resulting information
2 to the members of the committee for consideration before the
3 meeting;

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

8 [(3) at the time of being so informed, shall be
9 provided:

10 [(A)] a copy of the appropriate statement set
11 forth in Section 166.052; and

12 (E) [(B)] a copy of the registry list of health
13 care providers, health care facilities, and referral groups that,
14 in compliance with any state laws prohibiting barratry, have
15 volunteered their readiness to consider accepting transfer or to
16 assist in locating a provider willing to accept transfer that is
17 posted on the website maintained by the department [~~Texas Health~~
18 ~~Care Information Council~~] under Section 166.053; and

19 (2) if requested in writing, the patient or surrogate
20 is entitled to receive from the facility:

21 (A) not later than 72 hours after the request is
22 made, a free copy of the portion of the patient's medical record
23 related to the current admission to the facility or the treatment
24 received by the patient during the preceding 30 calendar days in the
25 facility, whichever is shorter, together with any reasonably
26 available diagnostic results and reports; and

27 (B) not later than the fifth calendar day after

1 the date of the request or at another time specified by mutual
2 agreement, a free copy of the remainder of the patient's medical
3 record, if any, related to the current admission to the facility.

4 (b-1) The patient or surrogate~~[, and~~

5 ~~[(4)]~~ is entitled to:

6 (1) [(A)] attend and participate in the meeting of the
7 ethics or medical committee, excluding the committee's
8 deliberations;

9 (2) be accompanied at the meeting by up to five
10 persons, or more persons at the committee's discretion, for
11 support, subject to the facility's reasonable written attendance
12 policy as necessary to:

13 (A) facilitate information sharing and
14 discussion of the patient's medical status and treatment
15 requirements; and

16 (B) preserve the order and decorum of the
17 meeting; and

18 (3) [(B)] receive a written explanation of the
19 decision reached during the review process.

20 (c) The written explanation required by Subsection (b-1)(3)
21 ~~[(b)(2)(B)]~~ must be included in the patient's medical record.

22 (d) If the attending physician, the patient, or the
23 surrogate ~~[person responsible for the health care decisions of the~~
24 ~~individual]~~ does not agree with the decision reached during the
25 review process ~~[under Subsection (b)]~~, the physician and the
26 facility shall make a reasonably diligent ~~[reasonable]~~ effort to
27 transfer the patient to a physician of the patient's or surrogate's

1 choice who is willing to accept the patient [~~comply with the~~
2 ~~directive~~]. The [~~If the patient is a patient in a health care~~
3 ~~facility, the~~] facility's personnel shall assist the physician in
4 arranging the patient's transfer to:

- 5 (1) another physician;
- 6 (2) an alternative care setting within that facility;
- 7 or
- 8 (3) another facility.

9 (e) If the patient or surrogate [~~the person responsible for~~
10 ~~the health care decisions of the patient~~] is requesting
11 life-sustaining treatment that the attending physician has decided
12 and the ethics or medical committee [~~review process~~] has affirmed
13 is medically inappropriate treatment, the patient shall be given
14 available life-sustaining treatment pending transfer under
15 Subsection (d). This subsection does not authorize withholding or
16 withdrawing pain management medication, medical procedures
17 considered necessary to provide comfort care, or any other medical
18 care provided to alleviate a patient's pain. The patient is
19 responsible for any costs incurred in transferring the patient to
20 another facility. The attending physician, any other physician
21 responsible for the care of the patient, and the health care
22 facility are not obligated to provide life-sustaining treatment
23 after the 21st calendar [~~10th~~] day after the written decision
24 required under Subsection (b-1) [~~(b)~~] is provided to the patient or
25 the surrogate [~~person responsible for the health care decisions of~~
26 ~~the patient~~] unless ordered to do so under Subsection (g), except
27 that artificially administered nutrition and hydration must be

1 provided unless, based on reasonable medical judgment, providing
2 artificially administered nutrition and hydration would:

3 (1) hasten the patient's death;

4 (2) seriously exacerbate other major medical problems
5 not outweighed by the benefit of the provision of the treatment;

6 (3) result in substantial irremediable physical pain
7 or discomfort not outweighed by the benefit of the provision of the
8 treatment; or

9 (4) be medically ineffective in prolonging the
10 patient's life.

11 (e-1) If during a previous admission to a facility the [~~a~~
12 ~~patient's~~] attending physician and the ethics or medical committee
13 [~~review process under Subsection (b) have~~] determined that
14 life-sustaining treatment is inappropriate, a subsequent committee
15 review is not required if [~~and~~] the patient is readmitted to the
16 same facility for the same condition within six months from the date
17 of the previous decision, provided that the [~~reached during the~~
18 ~~review process conducted upon the previous admission, Subsections~~
19 ~~(b) through (c) need not be followed if the patient's~~] attending
20 physician and a consulting physician who is a member of the ethics
21 or medical committee of the facility document on the patient's
22 readmission that the patient's condition [~~either has not improved~~
23 ~~or~~] has deteriorated since the previous review [~~process~~] was
24 conducted.

25 (g) On motion [~~At the request~~] of the patient or surrogate
26 [~~the person responsible for the health care decisions of the~~
27 ~~patient~~], the appropriate district or county court shall extend the

1 time period provided under Subsection (e) [~~only~~] if the court
2 finds, by a preponderance of the evidence, that there is a
3 reasonable expectation that the patient or surrogate may find a
4 physician or health care facility that will honor the patient's or
5 surrogate's health care or treatment decision [~~directive will be~~
6 ~~found~~] if the time extension is granted.

7 (h) This section may not be construed to impose an
8 obligation on a facility or a home and community support services
9 agency licensed under Chapter 142, an assisted living facility
10 licensed under Chapter 247, or a similar organization that is
11 beyond the scope of the services or resources of the facility, [~~or~~
12 agency, or organization]. This section does not apply to hospice
13 services provided by a home and community support services agency
14 licensed under Chapter 142 or services provided by an assisted
15 living facility licensed under Chapter 247.

16 SECTION 8. Subsections (a) and (b), Section 166.052, Health
17 and Safety Code, are amended to read as follows:

18 (a) In cases in which the attending physician disagrees with
19 and refuses to comply with a health care [~~honor an advance~~
20 ~~directive~~] or treatment decision requesting the provision of
21 life-sustaining treatment, the statement required by Section
22 166.046(b)(1)(D) [~~166.046(b)(2)(A)~~] shall be in substantially the
23 following form:

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

27 You have been given this information because you have

1 requested life-sustaining treatment~~[7]~~* for yourself as the
2 patient or on behalf of the patient, as applicable, which the
3 attending physician believes is not medically appropriate. This
4 information is being provided to help you understand state law,
5 your rights, and the resources available to you in such
6 circumstances. It outlines the process for resolving disagreements
7 about treatment among patients, families, and physicians. It is
8 based upon Section 166.046 of the Texas Advance Directives Act,
9 codified in Chapter 166 of the Texas Health and Safety Code.

10 When an attending physician disagrees with and refuses to
11 comply with a [~~an advance directive or other~~] request for
12 life-sustaining treatment because of the physician's medical
13 judgment that the treatment would be medically inappropriate, the
14 case will be reviewed by an ethics or medical committee.
15 Life-sustaining treatment will be provided through the review.

16 As the patient or the patient's decision-maker, you [~~You~~]
17 will receive notification of this review at least seven calendar
18 days [~~48 hours~~] before a meeting of the committee related to your
19 case. [~~You are entitled to attend the meeting.~~] With your
20 agreement, the meeting may be held sooner than seven calendar days
21 [~~48 hours~~], if possible.

22 The committee will appoint a patient liaison to assist you
23 through this process. You are entitled to attend the meeting,
24 address the committee, and be accompanied by up to five persons, or
25 more persons at the committee's discretion, to support you, subject
26 to the facility's reasonable written attendance policy to
27 facilitate information sharing and discussion of the patient's

1 medical status and treatment requirements and preserve the order
2 and decorum of the meeting. On written request, you are also
3 entitled to receive:

4 (1) not later than 72 hours after the request is made,
5 a free copy of the portion of the patient's medical record related
6 to the current admission to the facility or the treatment received
7 during the preceding 30 calendar days in the facility, whichever is
8 shorter, together with any reasonably available diagnostic results
9 and reports; and

10 (2) not later than the fifth calendar day following
11 the request or at another time specified by mutual agreement, a free
12 copy of the remainder of the medical record, if any, related to the
13 current admission to the facility.

14 As the patient or the patient's decision-maker, you are free
15 to seek a second opinion at the patient's or your expense from other
16 medical professionals regarding the patient's medical status and
17 treatment requirements and communicate the resulting information
18 to the members of the ethics or medical committee for consideration
19 before the meeting.

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

22 If after this review process both the attending physician and
23 the ethics or medical committee conclude that life-sustaining
24 treatment is medically inappropriate and yet you continue to
25 request such treatment, then 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,
3 health care facilities, and referral groups that have volunteered
4 their readiness to consider accepting transfer, or to assist in
5 locating a provider willing to accept transfer, maintained by the
6 Department of State [~~Texas~~] Health Services [~~Care Information~~
7 ~~Council~~]. You may wish to contact providers, facilities, or
8 referral groups on the list or others of your choice to get help in
9 arranging a transfer.

10 3. The patient will continue to be given life-sustaining
11 treatment and treatment to enhance pain management and reduce
12 suffering, including artificially administered nutrition and
13 hydration, until the patient [~~he or she~~] can be transferred to a
14 willing provider for up to 21 calendar [~~10~~] days from the time you
15 were given the committee's written decision that life-sustaining
16 treatment is not medically appropriate.

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

19 5. If a provider cannot be found willing to give the
20 requested treatment within 21 calendar [~~10~~] days, life-sustaining
21 treatment may be withdrawn unless a court of law has granted an
22 extension.

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

1 patients, families, and physicians. It is based upon Section
2 166.046 of the Texas Advance Directives Act, codified in Chapter
3 166 of the Texas Health and Safety Code.

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

9 As the patient or the patient's decision-maker, you [~~You~~]
10 will receive notification of this review at least seven calendar
11 days [~~48 hours~~] before a meeting of the committee related to your
12 case. You are entitled to attend the meeting. With your agreement,
13 the meeting may be held sooner than seven calendar days [~~48 hours~~],
14 if possible.

15 You will be appointed a patient liaison familiar with
16 end-of-life issues and hospice care options to assist you
17 throughout this process. A representative of the ethics or medical
18 committee will also conduct an advisory consultation with you.

19 On written request you are entitled to receive:

20 (1) not later than 72 hours after the request is made,
21 a free copy of the portion of the patient's medical record related
22 to the current admission to the facility or the treatment received
23 by the patient during the preceding 30 calendar days in the
24 facility, whichever is shorter, together with any reasonably
25 available diagnostic results and reports; and

26 (2) not later than the fifth calendar day following
27 the date of the request or at another time specified by mutual

1 agreement, a free copy of the remainder of the medical record, if
2 any, related to the current admission to the facility.

3 As the patient or the patient's decision-maker, you are free
4 to seek a second opinion at the patient's or your expense from other
5 medical professionals regarding the patient's medical status and
6 treatment requests and communicate the resulting information to the
7 members of the ethics or medical committee for consideration before
8 the meeting.

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

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

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

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

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

11 SECTION 9. Subchapter B, Chapter 166, Health and Safety
12 Code, is amended by adding Section 166.054 to read as follows:

13 Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR
14 MEDICAL COMMITTEE PROCESSES. (a) On submission of a health care
15 facility's application to renew its license, a facility in which
16 one or more meetings of an ethics or medical committee are held
17 under this chapter shall file a report with the department that
18 contains aggregate information regarding the number of cases
19 initiated by an ethics or medical committee under Section 166.046
20 and the disposition of those cases by the facility.

21 (b) Aggregate data submitted to the department under this
22 section may include only the following:

23 (1) the total number of patients for whom a review by
24 the ethics or medical committee was initiated under Section
25 166.046(b);

26 (2) the number of patients under Subdivision (1) who
27 were transferred to:

- 1 (A) another physician within the same facility;
2 or
3 (B) a different facility;
4 (3) the number of patients under Subdivision (1) who
5 were discharged to home;
6 (4) the number of patients under Subdivision (1) for
7 whom treatment was withheld or withdrawn pursuant to surrogate
8 consent:
9 (A) before the decision was rendered following a
10 review under Section 166.046(b);
11 (B) after the decision was rendered following a
12 review under Section 166.046(b); or
13 (C) during or after the 21-day period described
14 by Section 166.046(e);
15 (5) the average length of stay before a review meeting
16 is held under Section 166.046(b); and
17 (6) the number of patients under Subdivision (1) who
18 died while still receiving life-sustaining treatment:
19 (A) before the review meeting under Section
20 166.046(b);
21 (B) during the 21-day period; or
22 (C) during extension of the 21-day period, if
23 any.
24 (c) The report required by this section may not contain any
25 data specific to an individual patient or physician.
26 (d) The department shall adopt rules to:
27 (1) establish a standard form for the reporting

1 requirements of this section; and

2 (2) post on the department's Internet website the data
3 submitted under Subsection (b) in the format provided by rule.

4 (e) Data collected as required by, or submitted to the
5 department under, this section:

6 (1) is not admissible in a civil or criminal
7 proceeding in which a physician, health care professional acting
8 under the direction of a physician, or health care facility is a
9 defendant; and

10 (2) may not be used in relation to any disciplinary
11 action by a licensing board or other body with professional or
12 administrative oversight over a physician, health care
13 professional acting under the direction of a physician, or health
14 care facility.

15 SECTION 10. Subsections (a) and (c), Section 166.082,
16 Health and Safety Code, are amended to read as follows:

17 (a) A competent adult [~~person~~] may at any time execute a
18 written out-of-hospital DNR order directing health care
19 professionals acting in an out-of-hospital setting to withhold
20 cardiopulmonary resuscitation and certain other life-sustaining
21 treatment designated by the board.

22 (c) If the person is incompetent but previously executed or
23 issued a directive to physicians in accordance with Subchapter B
24 requesting that all treatment, other than treatment necessary for
25 keeping the person comfortable, be discontinued or withheld, the
26 physician may rely on the directive as the person's instructions to
27 issue an out-of-hospital DNR order and shall place a copy of the

1 directive in the person's medical record. The physician shall sign
2 the order in lieu of the person signing under Subsection (b) and may
3 use a digital or electronic signature authorized under Section
4 166.011.

5 SECTION 11. Subsection (d), Section 166.152, Health and
6 Safety Code, is amended to read as follows:

7 (d) The principal's attending physician shall make
8 reasonable efforts to inform the principal of any proposed
9 treatment or of any proposal to withdraw or withhold treatment
10 before implementing an agent's health care or treatment decision
11 [~~advance directive~~].

12 SECTION 12. Not later than March 1, 2014, the executive
13 commissioner of the Health and Human Services Commission shall
14 adopt the rules necessary to implement the changes in law made by
15 this Act to Chapter 166, Health and Safety Code.

16 SECTION 13. The change in law made by this Act applies only
17 to a review, consultation, disagreement, or other action relating
18 to a health care or treatment decision made on or after April 1,
19 2014. A review, consultation, disagreement, or other action
20 relating to a health care or treatment decision made before April 1,
21 2014, is governed by the law in effect immediately before the
22 effective date of this Act, and the former law is continued in
23 effect for that purpose.

24 SECTION 14. This Act takes effect September 1, 2013.