

BILL ANALYSIS

C.S.S.B. 11
By: Perry
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the law relating to do-not-resuscitate (DNR) orders does not provide adequate direction for the execution of a DNR order within a health care facility or hospital. C.S.S.B. 11 seeks to remedy this situation by setting out provisions relating to the proper execution of a valid DNR order for use in a health care facility or hospital.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 11 amends the Health and Safety Code to make a do-not-resuscitate (DNR) order issued for a patient in a health care facility or hospital valid only if the patient's attending physician issues the order, the order is dated, and the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation, and the DNR order is medically appropriate or only if the patient's attending physician issues the order, the order is dated, and the order is issued in compliance with the following: the written and dated directions of a patient who was competent at the time the patient wrote the directions; the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under certain statutory provisions relating to witnesses of an advance directive; the directions in an enforceable advance directive executed in another jurisdiction or an applicable advance directive executed by certain adults or on behalf of a qualified patient who is younger than 18 years of age; the directions of a patient's legal guardian or agent acting under a lawful medical power of attorney; or a treatment decision made in accordance with statutory provisions relating to a person who has not executed or issued a directive and is incompetent or incapable of communication. The bill defines "DNR order" for purposes of its provisions as an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

C.S.S.B. 11 establishes that a DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable. The bill requires the physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital, before placing in a patient's medical record a DNR order that is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and that is issued under circumstances in which in the reasonable medical judgment of the patient's

attending physician the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation, and the DNR order is medically appropriate, to inform the patient of the order's issuance or, if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent under a medical power of attorney or legal guardian, the patient's spouse, the patient's reasonably available adult children, or the patient's parents. The bill establishes that, to the extent a DNR order issued in compliance as provided by the bill conflicts with a treatment decision or advance directive validly executed or issued under the Advance Directives Act, the treatment decision made in compliance with the bill's provisions, advance directive validly executed or issued as described by those provisions, or DNR order dated and validly executed or issued in compliance with those provisions later in time controls. The bill sets out provisions relating to notice requirements for DNR orders and the revocation of DNR orders and a related limitation of liability.

C.S.S.B. 11 requires an attending physician, health care facility, or hospital that does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation to inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation. The bill requires the attending physician, facility, or hospital, if, after receiving such notice, the patient or another person authorized to act on behalf of the patient and the attending physician, health care facility, or hospital remain in disagreement, to make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation. The bill prohibits these procedures from being construed to control or supersede certain other bill provisions relating to the validity of a DNR order.

C.S.S.B. 11 exempts a physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under the bill's provisions or that, in accordance with those provisions, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under those provisions from civil or criminal liability or from being subject to review or disciplinary action by the appropriate licensing authority for that action. The bill exempts a physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order from civil or criminal liability or from being subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

C.S.S.B. 11 creates a Class A misdemeanor offense for a physician, physician assistant, nurse, or other person who intentionally conceals, cancels, effectuates, or falsifies another person's DNR order or who intentionally conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of the bill's provisions. The bill establishes that such offense does not preclude prosecution for any other applicable offense. The bill subjects a physician, health care professional, health care facility, hospital, or entity to review and disciplinary action by the appropriate licensing authority for intentionally failing to effectuate a DNR order in violation of the bill's provisions or for intentionally issuing a DNR order in violation of those provisions.

C.S.S.B. 11 expressly applies to a DNR order issued in a health care facility or hospital and expressly does not apply to an out-of-hospital DNR order as defined under the Advance Directives Act. The bill requires the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement the bill's provisions.

EFFECTIVE DATE

April 1, 2018.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 11 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.012 to read as follows:

Sec. 166.012. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) In this section, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation or other life-sustaining treatment on a patient whose circulatory or respiratory function ceases.

(b) This section applies to a DNR order used in a health care facility, including a hospital or an assisted living facility, or in hospice settings, including hospice services provided by a home and community support services agency. This section does not apply to an out-of-hospital DNR order as defined by Section 166.081.

(c) A DNR order issued for a patient is valid only if the order:

(1) is issued in compliance with:

(A) the written directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, or 166.035;

(D) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 166, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. DEFINITION. In this subchapter, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

Sec. 166.202. APPLICABILITY OF SUBCHAPTER.

(a) This subchapter applies to a DNR order issued in a health care facility or hospital.

(b) This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) A DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order:

(1) is issued in compliance with:

(A) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, or 166.035;

(D) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with

Subchapter D; or

(E) a treatment decision made in accordance with Section 166.039; or

(2) is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician:

(A) the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(B) the DNR order is medically appropriate.

(d) If an individual described by Section 166.039(b)(1), (2), or (3) arrives at the facility and notifies the facility of the individual's arrival after a DNR order is issued under Subsection (c)(2), the order must be disclosed to the individual in accordance with the priority established under Section 166.039(b).

(e) The facility may satisfy the notice requirement under Subsection (d) by notifying one person in accordance with the priority established under Section 166.039(b). The facility is not required to notify additional persons beyond the first person notified.

(f) A DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable.

Subchapter D; or

(E) a treatment decision made in accordance with Section 166.039; or

(2) is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician:

(A) the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(B) the DNR order is medically appropriate.

(See Sec. 166.204 below.)

(b) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable.

(c) Before placing in a patient's medical record a DNR order issued under Subsection (a)(2), the physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:

(1) inform the patient of the order's issuance; or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A) the patient's known agent under a medical power of attorney or legal guardian; or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the

treatment decision made in compliance with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.

(See Secs. 166.012(d) and (e) above.)

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) If an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(b) Failure to comply with Subsection (a) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital, who makes a good faith effort to comply with Subsection (a) of this section or Section 166.203(c) and contemporaneously records the person's effort to comply with Subsection (a) of this section or Section 166.203(c) in the patient's medical record is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) of this section or Section 166.203(c).

(d) A physician, physician assistant, or nurse may satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b). The physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(g) On admission to a health care facility or on initial provision of hospice services, as

(e) On admission to a health care facility or hospital, the facility or hospital shall provide

applicable, the facility or service provider shall provide to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or service provider regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this section.

to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY. (a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient or, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent: (1) effectively revokes an advance directive, in accordance with Section 166.042, for which a DNR order is issued under Section 166.203(a); or (2) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a). (b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order under Subsection (a). (c) A patient's attending physician may at any time revoke a DNR order issued under Section 166.203(a)(2). (d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) If an attending physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation. (b) If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and

the attending physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

(c) The procedures required by this section may not be construed to control or supersede Section 166.203(a).

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY

RESUSCITATION. A physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER. A physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

Sec. 166.209. ENFORCEMENT. (a) A physician, physician assistant, nurse, or other person commits an offense if the person intentionally conceals, cancels, effectuates, or falsifies another person's DNR order or if the person intentionally conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter. An offense under this subsection is a Class A misdemeanor. This subsection does not preclude prosecution for any other applicable offense.

(b) A physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally:

(1) failing to effectuate a DNR order in

violation of this subchapter; or
(2) issuing a DNR order in violation of this
subchapter.

SECTION 2. The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Section 166.012, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 2. Substantially the same as engrossed version.

SECTION 3. Section 166.012, Health and Safety Code, as added by this Act, applies only to a do-not-resuscitate order issued on or after the effective date of this Act.

SECTION 3. Substantially the same as engrossed version.

SECTION 4. This Act takes effect April 1, 2018.

SECTION 4. Same as engrossed version.