

BILL ANALYSIS

C.S.H.B. 2063
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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 hospice setting. C.S.H.B. 2063 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 hospice setting.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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.H.B. 2063 amends the Health and Safety Code to make a do-not-resuscitate (DNR) order issued for a patient in a health care facility or hospice setting valid only if 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 order is issued in compliance with the following: the written 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 or other life-sustaining treatment on a patient whose circulatory or respiratory function ceases.

C.S.H.B. 2063, if an individual who is the patient's spouse, reasonably available adult child, or parent arrives at the facility and notifies the facility of the individual's arrival after a DNR order is issued that 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, requires the DNR order to be disclosed to such an individual, in accordance with a certain priority. The bill authorizes the facility to satisfy that disclosure requirement by notifying one person in accordance with that

established priority and expressly does not require the facility to notify additional persons beyond the first person notified.

C.S.H.B. 2063 establishes that a DNR order takes effect at the time the order is issued, provided that the order was placed in the patient's medical record as soon as practicable. The bill requires a health care facility or hospice service provider on admission to the facility or on initial provision of hospice services, as applicable, to 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 the person authorized to make treatment decisions on behalf of the patient under the bill's provisions.

C.S.H.B. 2063 expressly 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 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

January 15, 2018.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2063 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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. The term includes an out-of-hospital DNR order as defined by Section 166.081.

(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.

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

(1) the order is issued in compliance with:
(A) the written directions of a patient who was competent at the time the patient wrote the directions;

HOUSE COMMITTEE SUBSTITUTE

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 given in the presence of a person authorized to make a treatment decision under Section 166.039(b);

(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) in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent within 24 hours regardless of the provision of cardiopulmonary resuscitation or other life-sustaining treatment.

(d) A DNR order takes effect at the time the order is written in the patient's chart or otherwise placed in the patient's medical record.

(e) A DNR order issued by a physician must be in writing and comply with this section.

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

(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 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 that the order was placed in the patient's medical record as soon as practicable.

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

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 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 4. This Act takes effect September 1, 2017.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect January 15, 2018.