A BILL TO BE ENTITLED

AN ACT

relating to the authority of an advanced practice registered nurse
or physician assistant to sign a death certificate or
out-of-hospital do-not-resuscitate order.

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

SECTION 1. Section 166.081(6), Health and Safety Code, is
amended to read as follows:

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital
do-not-resuscitate order, in the form specified by department rule
under Section 166.083, prepared and signed as required by this
subchapter [by the attending physician of a person], that documents
the instructions of a person or the person's legally authorized
representative and directs health care professionals acting in an
out-of-hospital setting not to initiate or continue the following
life-sustaining treatment:

(i) cardiopulmonary resuscitation;
(ii) advanced airway management;
(iii) artificial ventilation;
(iv) defibrillation;
(v) transcutaneous cardiac pacing; and
(vi) other life-sustaining treatment
specified by department rule under Section 166.101(a); and

(B) does not include authorization to withhold
medical interventions or therapies considered necessary to provide
comfort care or to alleviate pain or to provide water or nutrition.

SECTION 2. Sections 166.082(b) and (c), Health and Safety
Code, are amended to read as follows:

(b) Except as provided by this subsection, the declarant
must sign the out-of-hospital DNR order in the presence of two
witnesses who qualify under Section 166.003, at least one of whom
must be a witness who qualifies under Section 166.003(2). The
witnesses must sign the order. The attending physician, a
physician assistant, or an advanced practice registered nurse
providing care to [AE] the declarant must sign the order and shall
make the fact of the existence of the order and the reasons for
execution of the order a part of the declarant's medical record.
The declarant, in lieu of signing in the presence of witnesses, may
sign the out-of-hospital DNR order and have the signature
acknowledged before a notary public.

(c) If the person is incompetent but previously executed or
issued a directive to physicians in accordance with Subchapter B,
the physician, a physician assistant, or an advanced practice
registered nurse providing care to the person may rely on the
directive as the person's instructions to issue an out-of-hospital
DNR order and shall place a copy of the directive in the person's
medical record. The physician, the physician assistant, or the
advanced practice registered nurse shall sign the order in lieu of
the person signing under Subsection (b) and may use a digital or
electronic signature authorized under Section 166.011.

SECTION 3. Section 166.083(b), Health and Safety Code, is
amended to read as follows:

(b) The standard form of an out-of-hospital DNR order specified by department rule must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician, physician assistant, or advanced practice registered nurse signing the document is the person's attending physician or a physician assistant or advanced practice registered nurse of the person and that the physician, physician assistant, or advanced practice registered nurse is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician, the physician
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assistant, or the advanced practice registered nurse of the person
and the professional's [medical] license number [of the attending
physician];

(7) a separate section for execution of the document
by the legal guardian of the person, the person's proxy, an agent of
the person having a medical power of attorney, [or] the attending
physician, the physician assistant, or the advanced practice
registered nurse attesting to the issuance of an out-of-hospital
DNR order by nonwritten means of communication or acting in
accordance with a previously executed or previously issued
directive to physicians under Section 166.082(c) that includes the
following:

(A) a statement that the legal guardian, the
proxy, the agent, the person by nonwritten means of communication,
[or] the physician, the physician assistant, or the advanced
practice registered nurse directs that each listed life-sustaining
treatment should not be initiated or continued in behalf of the
person; and

(B) places for the printed names and signatures
of the witnesses and, as applicable, the legal guardian, proxy, agent, [or] physician, physician assistant, or advanced practice
registered nurse;

(8) a separate section for execution of the document
by at least one qualified relative of the person when the person
does not have a legal guardian, proxy, or agent having a medical
power of attorney and is incompetent or otherwise mentally or
physically incapable of communication, including:
(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the executive commissioner determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

SECTION 4. Sections 166.084(b) and (c), Health and Safety Code, are amended to read as follows:

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the person's attending physician or a physician assistant or advanced practice registered nurse of the
person and two witnesses who qualify under Section 166.003, at
least one of whom must be a witness who qualifies under Section
166.003(2).

(c) The attending physician, the physician assistant, or
the advanced practice registered nurse and witnesses shall sign the
out-of-hospital DNR order in the place of the document provided by
Section 166.083(b)(7) and the attending physician, the physician
assistant, or the advanced practice registered nurse shall sign the
document in the place required by Section 166.083(b)(13). The
physician, physician assistant, or advanced practice registered
nurse shall make the fact of the existence of the out-of-hospital
DNR order a part of the declarant's medical record and the names of
the witnesses shall be entered in the medical record.

SECTION 5. Sections 166.087(b) and (c), Health and Safety
Code, are amended to read as follows:

(b) If the adult person has designated a person to make a
treatment decision as authorized by Section 166.032(c), the
person's attending physician or a physician assistant or advanced
practice registered nurse of the person and the designated person
shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a
treatment decision as authorized by Section 166.032(c), the
person's attending physician or a physician assistant or advanced
practice registered nurse of the person shall comply with the
out-of-hospital DNR order unless the physician, physician
assistant, or advanced practice registered nurse believes that the
order does not reflect the person's present desire.
SECTION 6. Sections 166.088(a), (b), and (f), Health and Safety Code, are amended to read as follows:

(a) If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the person's attending physician or a physician assistant or advanced practice registered nurse of the person and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the person's attending physician or a physician assistant or advanced practice registered nurse of the person and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician, physician assistant, or advanced practice registered nurse who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

SECTION 7. Sections 166.089(d), (h), and (i), Health and Safety Code, are amended to read as follows:

(d) The responding health care professionals must determine
that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature or digital or electronic signature of the declarant or persons executing or issuing the order and the attending physician, a physician assistant, or an advanced practice registered nurse in the appropriate places designated on the form for indicating that the order form has been properly completed.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the person's attending physician or a physician assistant or advanced practice registered nurse of the person, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule be initiated or continued.

(i) If the policies of a health care facility preclude
compliance with the out-of-hospital DNR order of a person or an
out-of-hospital DNR order issued by an attending physician, a
physician assistant, or an advanced practice registered nurse on
behalf of a person who is admitted to or a resident of the facility,
or if the facility is unwilling to accept DNR identification
devices as evidence of the existence of an out-of-hospital DNR
order, that facility shall take all reasonable steps to notify the
person or, if the person is incompetent, the person's guardian or
the person or persons having authority to make health care
treatment decisions on behalf of the person, of the facility's
policy and shall take all reasonable steps to effect the transfer of
the person to the person's home or to a facility where the
provisions of this subchapter can be carried out.

SECTION 8. Section 166.092(b), Health and Safety Code, is
amended to read as follows:

(b) An oral revocation under Subsection (a)(3) or (a)(4)
takes effect only when the declarant or a person who identifies
himself or herself as the legal guardian, a qualified relative, or
the agent of the declarant having a medical power of attorney who
executed the out-of-hospital DNR order communicates the intent to
revoke the order to the responding health care professionals or the
person's attending physician or the physician assistant or advanced
practice registered nurse of the person at the scene. The
responding health care professionals shall record the time, date,
and place of the revocation in accordance with the statewide
out-of-hospital DNR protocol and rules adopted by the executive
commisioner and any applicable local out-of-hospital DNR
protocol. The attending physician, the physician's designee, the physician assistant, or the advanced practice registered nurse shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician, physician assistant, or advanced practice registered nurse received notice of the revocation. The attending physician, the physician's designee, the physician assistant, or the advanced practice registered nurse shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

SECTION 9. Section 166.095(c), Health and Safety Code, is amended to read as follows:

(c) If a person's attending physician or a physician assistant or advanced practice registered nurse of the person refuses to execute or comply with an out-of-hospital DNR order, the physician, physician assistant, or advanced practice registered nurse shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician, physician assistant, or advanced practice registered nurse who is willing to execute or comply with an out-of-hospital DNR order.

SECTION 10. The heading to Section 166.102, Health and Safety Code, is amended to read as follows:

Sec. 166.102. [PHYSICIAN'S] DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES
PERSONNEL.

SECTION 11. Section 166.102(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's, physician assistant's, or advanced practice registered nurse's do-not-resuscitate order.

SECTION 12. Sections 193.005(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) A person required to file a death certificate or fetal death certificate shall obtain the required medical certification from the decedent's attending physician or a physician assistant or advanced practice registered nurse of the decedent if the death occurred under the care of the person in connection with the treatment of the condition or disease process that contributed to the death.

(b) The attending physician, physician assistant, or advanced practice registered nurse shall complete the medical certification not later than five days after receiving the death certificate.

(c) An associate physician, the chief medical officer of the institution where the death occurred, a physician assistant or advanced practice registered nurse at the institution where the death occurred, or the physician who performed an autopsy on the decedent may complete the medical certification if:

(1) the attending physician, the physician assistant, or the advanced practice registered nurse described by Subsection
(a) is unavailable;

(2) the attending physician, the physician assistant, or the advanced practice registered nurse described by Subsection (a) approves; and

(3) the person completing the medical certification has access to the medical history of the case and the death is due to natural causes.

SECTION 13. Section 671.001(d), Health and Safety Code, is amended to read as follows:

(d) A registered nurse, including an advanced practice registered nurse, or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection (b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The executive commissioner of the Health and Human Services Commission shall adopt rules to govern policies for facilities, institutions, or entities that do not have organized nursing staffs and organized medical staffs or medical consultants.

SECTION 14. Section 671.002(a), Health and Safety Code, is amended to read as follows:

(a) A physician who determines death in accordance with
Section 671.001(b) or a registered nurse, including an advanced
practice registered nurse, or physician assistant who determines
death in accordance with Section 671.001(d) is not liable for civil
damages or subject to criminal prosecution for the physician's,
registered nurse's, or physician assistant's actions or the actions
of others based on the determination of death.

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.