

By: Klick

H.B. No. 4090

A BILL TO BE ENTITLED

AN ACT

relating to advance directives or health care or treatment decisions made by or on behalf of patients.

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

SECTION 1. This Act may be cited as the Texas Patient Autonomy Restoration Act of 2017.

SECTION 2. The purpose of this Act is to protect the right of patients and their families to decide whether and under what circumstances to choose or reject life-sustaining treatment. This Act amends the applicable provisions of the Advance Directives Act (Chapter 166, Health and Safety Code) to ensure that, when an attending physician is unwilling to respect a patient's advance directive or a patient's or family's decision to choose the treatment necessary to prevent the patient's death, life-sustaining medical treatment will be provided until the patient can be transferred to a health care provider willing to honor the directive or treatment decision.

SECTION 3. Section 166.045(c), Health and Safety Code, is amended to read as follows:

(c) If an attending physician refuses to comply with a directive or treatment decision to provide life-sustaining treatment to a patient [~~and does not wish to follow the procedure established under Section 166.046~~], life-sustaining treatment shall be provided to the patient [~~, but only~~] until [~~a reasonable~~

1 ~~opportunity has been afforded for the transfer of]~~ the patient is
2 transferred to another physician or health care facility willing to
3 comply with the directive or treatment decision to provide
4 life-sustaining treatment to the patient.

5 SECTION 4. Sections 166.046(a), (b), (e), and (f), Health
6 and Safety Code, are amended to read as follows:

7 (a) If an attending physician refuses to honor a patient's
8 advance directive or a health care or treatment decision made by or
9 on behalf of a patient, other than a directive or decision to
10 provide artificial nutrition and hydration to the patient, the
11 physician's refusal shall be reviewed by an ethics or medical
12 committee. The attending physician may not be a member of that
13 committee. [~~The patient shall be given life-sustaining treatment~~
14 ~~during the review.~~]

15 (b) The patient or the person responsible for the health
16 care decisions of the individual who has made the decision
17 regarding the directive or treatment decision:

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

22 (2) shall be informed of the committee review process
23 not less than 48 hours before the meeting called to discuss the
24 patient's directive, unless the time period is waived by mutual
25 agreement;

26 (3) at the time of being so informed, shall be
27 provided[+]

1 ~~[(A) a copy of the appropriate statement set~~
2 ~~forth in Section 166.052; and~~

3 ~~[(B)]~~ a copy of the registry list of health care
4 providers and referral groups that have volunteered their readiness
5 to consider accepting transfer or to assist in locating a provider
6 willing to accept transfer that is posted on the website maintained
7 by the department under Section 166.053; and

8 (4) is entitled to:

9 (A) attend the meeting;

10 (B) receive a written explanation of the decision
11 reached during the review process;

12 (C) receive a copy of the portion of the
13 patient's medical record related to the treatment received by the
14 patient in the facility for the lesser of:

15 (i) the period of the patient's current
16 admission to the facility; or

17 (ii) the preceding 30 calendar days; and

18 (D) receive a copy of all of the patient's
19 reasonably available diagnostic results and reports related to the
20 medical record provided under Paragraph (C).

21 (e) If the patient or the person responsible for the health
22 care decisions of the patient is requesting life-sustaining
23 treatment that the attending physician has decided and the ethics
24 or medical committee has affirmed is medically inappropriate
25 treatment, the patient shall be given available life-sustaining
26 treatment pending transfer under Subsection (d). This subsection
27 does not authorize withholding or withdrawing pain management

1 medication, medical procedures necessary to provide comfort, or any
2 other health care provided to alleviate a patient's
3 pain. Artificially [~~The patient is responsible for any costs~~
4 ~~incurred in transferring the patient to another facility. The~~
5 ~~attending physician, any other physician responsible for the care~~
6 ~~of the patient, and the health care facility are not obligated to~~
7 ~~provide life-sustaining treatment after the 10th day after both the~~
8 ~~written decision and the patient's medical record required under~~
9 ~~Subsection (b) are provided to the patient or the person~~
10 ~~responsible for the health care decisions of the patient unless~~
11 ~~ordered to do so under Subsection (g), except that artificially]~~
12 administered nutrition and hydration must be provided unless, based
13 on reasonable medical judgment, providing artificially
14 administered nutrition and hydration would:

- 15 (1) hasten the patient's death;
- 16 (2) be medically contraindicated such that the
17 provision of the treatment seriously exacerbates life-threatening
18 medical problems not outweighed by the benefit of the provision of
19 the treatment;
- 20 (3) result in substantial irremediable physical pain
21 not outweighed by the benefit of the provision of the treatment;
- 22 (4) be medically ineffective in prolonging life; or
- 23 (5) be contrary to the patient's or surrogate's
24 clearly documented desire not to receive artificially administered
25 nutrition or hydration.

26 (f) Life-sustaining treatment under this section may not be
27 entered in the patient's medical record as medically unnecessary

1 treatment [~~until the time period provided under Subsection (e) has~~
2 ~~expired~~].

3 SECTION 5. Section [166.051](#), Health and Safety Code, is
4 amended to read as follows:

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

17 SECTION 6. Section [25.0021\(b\)](#), Government Code, is amended
18 to read as follows:

19 (b) A statutory probate court as that term is defined in
20 Section [22.007\(c\)](#), Estates [~~3(ii), Texas Probate~~] Code, has:

21 (1) the general jurisdiction of a probate court as
22 provided by the Estates [~~Texas Probate~~] Code; and

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

26 (A) Section [~~166.046,~~] [192.027](#), [193.007](#),
27 [552.015](#), [552.019](#), [711.004](#), or [714.003](#), Health and Safety Code;

1 (B) Chapter 462, Health and Safety Code; or
2 (C) Subtitle C or D, Title 7, Health and Safety
3 Code.

4 SECTION 7. Sections 166.046(g) and 166.052, Health and
5 Safety Code, are repealed.

6 SECTION 8. To the extent of any conflict, this Act prevails
7 over another Act of the 85th Legislature, Regular Session, 2017,
8 relating to nonsubstantive additions to and corrections in enacted
9 codes.

10 SECTION 9. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2017.