

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 917
By: Hughes et al.
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law allows patients to express their wishes about medical treatment in a legal document called an advance directive. Under the Advance Directives Act, patients put in writing whether they want life-sustaining treatment if they become unable to make medical decisions for themselves. Many patients are surprised to learn that the same Act that gives them the right to express their desire for life-sustaining treatment also gives a health care provider the right to withdraw that treatment, overriding their written directives and the objections of their family.

Under Section 166.046, Health and Safety Code, if a doctor or hospital decides not to honor a patient's advance directive, the doctor can withdraw life-sustaining treatment, such as a ventilator, after getting approval from the hospital's committee and giving 10 days' notice to the family. Families only have this 10-day window to transfer their loved one to a different facility before basic life-sustaining measures are discontinued. If the family cannot find another facility in 10 days (which is often the case), the doctor can remove the treatment, hastening the patient's death.

S.B. 917 protects patients' right to life and will save lives by requiring that when a physician refuses to honor a patient or surrogate's medical directives, the physician must continue to provide treatment for 90 days instead of just 10 days. Through this narrow reform, S.B. 917 incentivizes doctors and families to work together to achieve the best outcome for the patient. Current law and S.B. 917 only require a physician to provide treatment that in reasonable medical judgment sustains the life of the patient and without which the patient will die.

Current law gives doctors immunity from administrative, criminal, and civil liability if they follow the procedure in statute, and S.B. 917 does not in any way change or remove that immunity.

C.S.S.B. 917 amends current law relating to advance directives or health care or treatment decisions made by or on behalf of patients.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Respecting Texas Patients' Right to Life Act of 2021.

SECTION 2. Provides that 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. Provides that 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 for 90 days after an ethics or medical committee's review so that the patient can be transferred to a health care provider willing to honor the directive or treatment decision.

SECTION 3. Amends Section 166.045(c), Health and Safety Code, as follows:

(c) Requires that, if an attending physician refuses to comply with a directive or treatment decision to provide life-sustaining treatment to a patient, life-sustaining treatment be provided to the patient for 90 days under the procedures prescribed by Section 166.046 (Procedure if not Effectuating a Directive or Treatment Decision) so that the patient can be transferred to another physician or health care facility willing to comply with the directive or treatment decision. Deletes existing text requiring that, if an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

SECTION 4. Amends Sections 166.046(a), (b), (d), (e), and (e-1), Health and Safety Code, as follows:

(a) Requires that the physician's refusal, if an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, other than a directive or decision to provide artificial nutrition and hydration to the patient, be reviewed by an ethics or medical committee.

(b) Provides that the patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1)-(3) makes no changes to these subdivisions; and

(4) is entitled to certain rights, including to receive a written explanation of the recommendations made during the review process, rather than the decision reached during the review process.

Makes nonsubstantive changes.

(d) Makes a conforming change to this subsection.

(e) Requires the patient, if the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician and the ethics or medical committee consider medically inappropriate treatment, rather than has affirmed is medically inappropriate treatment, to be given available life-sustaining treatment pending transfer under Subsection (d). Provides that the attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 90th day after both the written recommendation, rather than after the 10th day after both the written decision, and the patient's medical record required under Subsection (b) are provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g) (relating to the requirement that an appropriate court extend the time a health care facility must provide life-sustaining treatment only under certain conditions), except that artificially administered nutrition and hydration are required to be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would result in certain unfavorable outcomes. Deletes existing text providing that the patient is responsible for any costs incurred in transferring the patient to another facility. Makes nonsubstantive changes.

(e-1) Makes a conforming change to this subsection.

SECTION 5. Amends Section 166.051, Health and Safety Code, as follows:

Sec. 166.051. LEGAL RIGHT TO RESPONSIBILITY NOT AFFECTED. Requires that, if an attending physician or health care facility is unwilling to honor a patient's advance

directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment be provided to the patient in accordance with Chapter 166 (Advance Directives). Deletes existing text requiring that life-sustaining treatment be provided to the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision. Makes nonsubstantive changes.

SECTION 6. Amends Section 166.052(a), Health and Safety Code, as follows:

(a) Requires that the statement required by Section 166.046(b)(3)(A) (relating to a statement explaining the patient's right to transfer), in cases in which the attending physician refuses to honor an advance directive or health care or treatment decision requesting the provision of life-sustaining treatment, be in substantially a certain form. Sets forth the required language of the form.

SECTION 7. Provides that the changes in law made by this Act apply only to a health care or treatment decision made on or after the effective date of this Act.

SECTION 8. Effective date: upon passage or September 1, 2021.