87R262 SCL-D

By:  Hinojosa H.B. No. 102

A BILL TO BE ENTITLED

AN ACT

relating to an advance directive and do-not-resuscitate order of a pregnant woman and information provided for an advance directive.

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

SECTION 1.  Section 166.033, Health and Safety Code, is amended to read as follows:

Sec. 166.033.  FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for three [~~two~~] other types of directives that can be important during a serious illness. These are the Medical Power of Attorney, [~~and~~] the Out-of-Hospital Do-Not-Resuscitate Order, and the Health Care Facility Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, \_\_\_\_\_\_\_\_\_\_, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_ | I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR |
| \_\_\_\_\_\_\_\_\_\_ | I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.) |

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_ | I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR |
| \_\_\_\_\_\_\_\_\_\_ | I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.) |

Pregnancy directive:

If I am pregnant, my decision concerning life-sustaining treatment is modified as follows:

|  |
| --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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(THIS SECTION IS OPTIONAL, IS COMPLETED ONLY FOR WOMEN OF CHILD-BEARING AGE, AND DOES NOT AFFECT THE VALIDITY OF THIS FORM IF LEFT BLANK.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered nutrition and hydration, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make health care or treatment decisions with my physician compatible with my personal values:

1.  \_\_\_\_\_\_\_\_\_\_

2.  \_\_\_\_\_\_\_\_\_\_

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. [~~I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant.~~] This directive will remain in effect until I revoke it. No other person may do so.

Signed\_\_\_\_\_\_\_\_\_\_ Date\_\_\_\_\_\_\_\_\_\_ City, County, State of Residence \_\_\_\_\_\_\_\_\_\_

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a health care or treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 \_\_\_\_\_\_\_\_\_\_ Witness 2 \_\_\_\_\_\_\_\_\_\_

Definitions:

"Artificially administered nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.

"Irreversible condition" means a condition, injury, or illness:

(1)  that may be treated, but is never cured or eliminated;

(2)  that leaves a person unable to care for or make decisions for the person's own self; and

(3)  that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

SECTION 2.  Section 166.049, Health and Safety Code, is amended to read as follows:

Sec. 166.049.  PREGNANT WOMAN [~~PATIENTS~~]. A woman of child-bearing age may specify in an advance directive executed by the woman the effect the woman's pregnancy has on the advance directive [~~A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient~~].

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 signing the document is the attending physician of the person and that the physician 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)  a statement that the person, if a woman of child-bearing age, may specify in the form the effect the woman's pregnancy has on the out-of-hospital DNR order;

(7)  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 of the person and the medical license number of the attending physician;

(8) [~~(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 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 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;

(9) [~~(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;

(10) [~~(9)~~]  a place for entry of the date of execution of the document;

(11) [~~(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;

(12) [~~(11)~~]  a statement that the document must accompany the person during transport;

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

(14) [~~(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.  Section 166.084(c), Health and Safety Code, is amended to read as follows:

(c)  The attending physician and witnesses shall sign the out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(8) [~~166.083(b)(7)~~] and the attending physician shall sign the document in the place required by Section 166.083(b)(14) [~~166.083(b)(13)~~]. The physician 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.  Section 166.098, Health and Safety Code, is amended to read as follows:

Sec. 166.098.  PREGNANT WOMAN [~~PERSONS~~]. A woman of child-bearing age may specify in an out-of-hospital DNR order executed by the woman the effect the woman's pregnancy has on the order [~~A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule under this subchapter from a person known by the responding health care professionals to be pregnant~~].

SECTION 6.  This Act takes effect September 1, 2021.