By:  Hughes, et al. S.B. No. 917

(In the Senate - Filed March 2, 2021; March 11, 2021, read first time and referred to Committee on Health & Human Services; May 13, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 4; May 13, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham        X

Campbell              X

Hall              X

Miles                 X

Powell                X

Seliger               X

COMMITTEE SUBSTITUTE FOR S.B. No. 917 By:  Perry

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 Respecting Texas Patients' Right to Life Act of 2021.

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 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.  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 for 90 days under the procedures prescribed by Section 166.046 so that[~~, but only until a reasonable opportunity has been afforded for the transfer of~~] the patient can be transferred to another physician or health care facility willing to comply with the directive or treatment decision.

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

(a)  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, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.

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

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

(3)  at the time of being so informed, shall be provided:

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

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

(4)  is entitled to:

(A)  attend the meeting;

(B)  receive a written explanation of the recommendations made [~~decision reached~~] during the review process;

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

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

(ii)  the preceding 30 calendar days; and

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

(d)  If the attending physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the recommendations made [~~decision reached~~] during the review process under Subsection (b), the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. If the patient is a patient in a health care facility, the facility's personnel shall assist the physician in arranging the patient's transfer to:

(1)  another physician;

(2)  an alternative care setting within that facility; or

(3)  another facility.

(e)  If the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician [~~has decided~~] and the ethics or medical committee consider [~~has affirmed is~~] medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical procedures necessary to provide comfort, or any other health care provided to alleviate a patient's pain. [~~The patient is responsible for any costs incurred in transferring the patient to another facility.~~] 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 [~~10th~~] day after both the written recommendation [~~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), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

(1)  hasten the patient's death;

(2)  be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment;

(3)  result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment;

(4)  be medically ineffective in prolonging life; or

(5)  be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

(e-1)  If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the recommendations made [~~decision reached~~] during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

SECTION 5.  Section 166.051, Health and Safety Code, is amended to read as follows:

Sec. 166.051.  LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided 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 must [~~is required to~~] be provided to the patient in accordance with this chapter[~~, 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~~].

SECTION 6.  Section 166.052(a), Health and Safety Code, is amended to read as follows:

(a)  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, the statement required by Section 166.046(b)(3)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish To Continue

You have been given this information because you have requested life-sustaining treatment\* for yourself as the patient or on behalf of the patient, as applicable, which the attending physician believes is not medically appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least 48 hours before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

You are entitled to receive a written explanation of the recommendations made [~~decision reached~~] during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is medically inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1.  The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2.  You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

3.  The patient will continue to be given life-sustaining treatment until the patient can be transferred to a willing provider for up to 90 [~~10~~] days from the time you were given both the committee's written decision that life-sustaining treatment is not appropriate and the patient's medical record. The patient will continue to be given after the 90-day [~~10-day~~] period treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment, result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment, be medically ineffective in prolonging life, or be contrary to the patient's or surrogate's clearly documented desires.

4.  [~~If a transfer can be arranged, the patient will be responsible for the costs of the transfer.~~

[~~5.~~]  If a provider cannot be found willing to give the requested treatment within 90 [~~10~~] days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

5. [~~6.~~]  You may ask the appropriate district or county court to extend the 90-day [~~10-day~~] period if the court finds that there is a reasonable expectation that you may find a physician or health care facility willing to provide life-sustaining treatment if the extension is granted. Patient medical records will be provided to the patient or surrogate in accordance with Section 241.154, Texas Health and Safety Code.

\*"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 or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

SECTION 7.  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.  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, 2021.

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