By:  Creighton S.B. No. 1381

A BILL TO BE ENTITLED

AN ACT

relating to advance directives and health care and treatment decisions.

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

SECTION 1.  Section 166.002, Health and Safety Code, is amended by adding Subdivision (16) to read as follows:

(16)  "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

SECTION 2.  Sections 166.045(c) and (d), Health and Safety Code, are amended to read as follows:

(c)  If an attending physician refuses to comply with a directive or treatment decision for a reason permitted by Section 166.046(a-1) and not prohibited by Section 166.0455 [~~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 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 in accordance with Section 166.046.

(d)  A physician, heath professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures and limitations outlined in Sections 166.0455 and [~~Section~~] 166.046.

SECTION 3.  Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.0455 to read as follows:

Sec. 166.0455.  LIMITATION ON REFUSAL TO EFFECTUATE CERTAIN ADVANCE DIRECTIVES OR TREATMENT DECISIONS.  A physician or other health care professional, a health care facility, or an ethics or medical committee shall not override or refuse to honor and comply with a patient's advance directive or a health care or treatment decision made by or on behalf of a patient that directs the provision of life-sustaining treatment and shall not consider life-sustaining treatment to be inappropriate treatment under Section 166.046 based on:

(1)  the lesser value the physician or professional, facility or committee places on sustaining the life of an elderly, disabled, or terminally ill patient compared to the value of sustaining the life of a patient who is younger, not disabled, or not terminally ill; or

(2)  a disagreement between the physician or professional, facility, or committee and the patient, or the person authorized to make a treatment decision for the patient under Section 166.039, over the greater weight the patient or person places on sustaining the patient's life than the risk of disability.

SECTION 4.  Section 166.046, Health and Safety Code, is amended by amending Subsections (a), (b), (c), and (g) and adding Subsections (a-1), (a-2), (c-1), and (d-1) to read as follows:

(a)  If an attending physician refuses to honor or comply with a patient's advance directive or a health care or treatment decision made by or on behalf of a patient for a reason permitted by Subsection (a-1) and not prohibited by Section 166.0455, 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. A person may not coerce or attempt to coerce a physician not to comply with a patient's advance directive or a health care or treatment decision made by or on behalf of a patient by threatening or implementing adverse employment decisions or professional discipline.

(a-1)  The ethics or medical committee reviewing the physician's refusal under Subsection (a) shall not consider life-sustaining treatment inappropriate unless, based on reasonable medical judgment, the life-sustaining treatment requested by or on behalf of the patient is:

(1)  futile because the treatment is physiologically ineffective in achieving the specific intended benefit to the patient as intended by or on behalf of the patient; or

(2)  medically inappropriate because providing the treatment to the patient would clearly create a substantially greater risk of causing or hastening the death of the patient than would withholding or withdrawing the treatment.

(a-2)  An ethics or medical committee shall record a meeting held under this section. The recording must:

(1)  include audio; and

(2)  be on a tangible medium, including a disc, tape, wire, film, or electronic storage drive.

(b)  The patient, the patient's attorney, the patient's advocate, 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)  unless the patient or person responsible for the health care decisions of the patient requests an earlier meeting, must [~~shall~~] be informed in writing [~~of the committee review process~~] not less than seven days [~~48 hours~~] before the meeting called to discuss the patient's directive of:

(A)  the committee review process;

(B)  the right to representation by an attorney and patient advocate present at the committee review meeting;

(C)  the date, time, and location of the meeting; and

(D)  the name and title of each of the individuals on the ethics or medical committee [~~, 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 and participate in the entire meeting;

(B)  receive a written explanation of the 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);

(E)  during the committee review meeting, have an opportunity to:

(i)  explain the justification for the treatment decision made by or on behalf of the patient;

(ii)  if applicable, receive a written explanation of the manner in which the attending physician's and ethics or medical committee's decision to refuse to honor or comply with the treatment decision made by or on behalf of the patient complies with Section 166.0455; and

(iii)  respond to the attending physician's or ethics or medical committee's description, prognosis, or assessment of the patient, treatment decision, and compliance with this section and Section 166.0455; and

(F)  after the ethics or medical committee has rendered a decision:

(i)  receive a written explanation of the ethics or medical committee's decision; and

(ii)  receive an audio recording of the committee review meeting.

(c)  The written explanation required by Subsections [~~Subsection~~] (b)(4)(B), (E), and (F) must be included in the patient's medical record.

(c-1) The ethics or medical committee shall not approve withdrawing or withholding life-sustaining treatment if the ethics or medical committee determines during the review described by Subsection (a) that the physician refused to honor a patient's advance directive or a health care or treatment decision made by or on behalf of the patient for a reason prohibited by Section 166.0455.

(d-1)  The attending physician may comply with Subsection (d) by:

(1)  providing to the patient or person responsible for the health care decisions of the patient:

(A)  a list of at least 10 facilities able to provide the level of care requested;

(B)  a written explanation of whether the patient could be discharged to the patient's home and the health care services required to provide the requested treatment; and

(C)  the explanations and recommendations described by Subdivision (3), if applicable;

(2)  contacting the appropriate administrators and physicians at the facilities on the list described by Subdivision (1) to initiate a transfer;

(3)  if all of the facilities on the list described by Subdivision (1) refuse the transfer, for each facility:

(A)  requesting a written explanation of the facility's reasons for refusal; and

(B)  developing a written recommendation that includes:

(i)  the reason for the facility's refusal;

(ii)  the action the physician, facility, and patient or person responsible for the health care decisions of the patient may take to transfer to the facility; and

(iii)  the name of any administrator and physician contacted by the attending physician under Paragraph (A); and

(4)  facilitating the transfer of the patient to any appropriate facility willing to accept the patient.

(g)  At the request of the patient or the person responsible for the health care decisions of the patient, the appropriate [~~district or county~~] court shall extend the time period provided under Subsection (e) [~~only~~] if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

SECTION 5.  Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Sections 166.0463 and 166.0465 to read as follows:

Sec. 166.0463.  ETHICS OR MEDICAL COMMITTEE MEMBERS. (a) An individual may not be a member of an ethics or medical committee of a health care facility if the individual or individual's spouse:

(1)  is employed by or participates in the management of the facility or another affiliated facility;

(2)  owns or controls, directly or indirectly, an interest in the facility or another affiliated facility; or

(3)  uses or receives a substantial amount of tangible goods, services, or money from the facility or another affiliated facility.

(b)  An ethics or medical committee must include as members:

(1)  if the patient is an adherent or member of a recognized religious organization, a chaplain, spiritual advisor, or spiritual care professional of that religious organization;

(2)  an individual with experience as an advocate for patients and patients' family caregivers; and

(3)  a representative of an established patient advocacy organization.

Sec. 166.0465.  COURT PROCEEDINGS; APPEAL; FILING FEE AND COURT COSTS. (a) A patient, the person responsible for the patient's health care decisions, or the person who has made the decision regarding the advance directive or treatment decision may file a motion for injunctive relief in any county court at law, court having probate jurisdiction, or district court, including a family district court, based on:

(1)  a request for extension of time to effect a patient transfer for relief under Section 166.046(g); or

(2)  an allegation that a physician or other health care professional, health care facility, or ethics or medical committee is violating or threatening to violate this chapter.

(b)  The person filing a motion under Subsection (a) shall immediately serve a copy of the motion on the defendant.

(c)  The court shall promptly set a time for a hearing on a motion filed under Subsection (a) and shall keep a record of all testimony and other oral proceedings in the action. The court shall rule on the motion and issue written findings of fact and conclusions of law not later than the fifth business day after the date the motion is filed with the court.

(d)  The time for the hearing and the date by which the court must rule on the motion under Subsection (c) may be extended, for good cause shown, by the court.

(e)  Any party may appeal the decision of the court under Subsection (c) to the court of appeals having jurisdiction over civil matters in the county in which the motion was filed by filing a notice of appeal with the clerk of the court that ruled on the motion not later than the first business day after the date the decision of the court was issued.

(f)  On receipt of a notice of appeal under Subsection (e), the clerk of the court that ruled on the motion shall deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. On receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court, and the court of appeals shall promptly issue an expedited briefing schedule and set a time for a hearing.

(g)  The court of appeals shall rule on an appeal under Subsection (f) not later than the fifth business day after the date the notice of appeal is filed with the court that ruled on the motion.

(h)  The times for the filing of briefs, the hearing, and the date by which the court of appeals must rule on the appeal under Subsection (g) may be extended, for good cause shown, by the court of appeals.

(i)  Any party may file a petition for review of the decision of the court of appeals under Subsection (g) with the clerk of the supreme court not later than the third business day after the date the decision of the court of appeals was issued. Other parties may file responses not later than the third business day after the date the petition for review was filed. The supreme court shall grant, deny, refuse, or dismiss the petition, without regard to whether a reply to any response has been filed, not later than the third business day after the date the response was due. If the supreme court grants the petition for review, the court shall exercise the court's sound discretion in determining how expeditiously to hear and decide the case.

(j)  If a motion is filed under Subsection (a) and the dispute concerns whether life-sustaining treatment should be provided to the patient, life-sustaining treatment must be provided through midnight of the day by which a notice of appeal must be filed unless the court directs that the life-sustaining treatment be provided for a longer period. If a notice of appeal is under Subsection (e) is filed, life-sustaining treatment must be provided through midnight of the day by which a petition for review to the supreme court must be filed, unless the court of appeals directs that the life-sustaining treatment be provided for a longer period. If a petition for review to the supreme court is filed under Subsection (i), life-sustaining treatment must be provided through midnight of the day on which the supreme court denies, refuses, or dismisses the petition or issues a ruling on the merits, unless the supreme court directs that the life-sustaining treatment be provided for a longer period.

(k)  A filing fee or court cost may not be assessed for any proceeding in a trial or appellate court under this section.

SECTION 6.  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 and comply with a patient's advance directive or a treatment decision to provide life-sustaining treatment for a reason permitted by Section 166.046(a-1) and not prohibited by Section 166.0455, life-sustaining treatment is required to be provided 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 in accordance with Section 166.046.

SECTION 7.  Sections 166.052(a) and (b), Health and Safety Code, are 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 seven days [~~48 hours~~] before a meeting of the committee related to your case. You are entitled to attend and participate in the entire meeting. With your agreement, the meeting may be held sooner than 48 hours, if possible.

A physician or other health care professional, a health care facility, or an ethics or medical committee may not deny a patient life-sustaining treatment based on:

1. the lesser value the physician or professional, facility, or committee places on sustaining the life of an elderly, disabled, or terminally ill patient compared to the value of sustaining the life of a patient who is younger, not disabled, or not terminally ill; or

2. a disagreement between the physician or professional, facility, or committee and the patient, or the person authorized to make a treatment decision for the patient under Section 166.039, over the greater weight the patient or person places on sustaining the patient's life than the risk of disability.

Life-sustaining treatment may be denied if the treatment is:

1. futile because the treatment is physiologically ineffective in achieving the specific intended benefit to the patient as intended by or on behalf of the patient; or

2. medically inappropriate because providing the treatment to the patient would clearly create a substantially greater risk of causing or hastening the death of the patient than would withholding or withdrawing it.

You are entitled to receive a written explanation of the decision reached during the review process and the medical judgment and reason leading to the decision in accordance with Section 166.0455, Health and Safety Code.

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 10 days from the time you were given both the committee's written decision and explanation that life-sustaining treatment is not appropriate and the patient's medical record. The patient will continue to be given after the 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 10 days, life-sustaining treatment may be withdrawn unless a court of law has ruled otherwise [~~granted an extension~~].

6.  You may ask the [~~appropriate district or county~~] court to extend the 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.

7. The law gives you the right to seek a court order to require a physician or other health care professional, health care facility, or ethics or medical committee to comply with your rights under the Texas Advance Directives Act if the physician or professional, facility, or committee is violating or threatening to violate a provision of that Act. You may wish to talk to legal counsel for further information about your right to seek a court order.

\*"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.

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal 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 Life-Sustaining Treatment That You Wish To Stop

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment\* for yourself as the patient or on behalf of the patient, as applicable, and the attending physician disagrees with and refuses to comply with that request. The 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 withdrawal or withholding of life-sustaining treatment for any reason, 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 seven days [~~48 hours~~] before a meeting of the committee related to your case. You are entitled to attend and participate in the entire 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 decision reached during the review process and the medical judgment and reason leading to the decision in accordance with Section 166.0455.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining 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 withdraw or withhold the life-sustaining 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 law gives you a right to seek a court order to require a physician or other health care professional, health care facility, or ethics or medical committee to comply with your rights under the Texas Advance Directives Act if the physician, facility, or committee is violating or threatening to violate a provision of that Act. You may wish to talk to legal counsel for further information about your right to seek a court order.

\*"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 8.  Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.054 to read as follows:

Sec. 166.054.  REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE. (a)  A health care facility shall complete and submit an annual report to the commission, in the form and manner prescribed by commission rule, of all meetings of an ethics or medical committee held under Section 166.046 during the preceding year.

(b) The report required by Subsection (a) must include:

(1)  whether the health care facility held any ethics or medical committee meetings during the preceding year; and

(2)  for each meeting held during the preceding year:

(A)  the patient's age, sex, race, and state and county of residence;

(B)  the patient's type of health benefit plan, if applicable;

(C)  the date of the meeting;

(D)  whether the patient was transferred to another physician in the same facility;

(E)  whether the patient was transferred to another facility;

(F)  whether the patient was discharged to the patient's home;

(G)  whether treatment was withheld or withdrawn without the consent of the patient or person authorized to make treatment decisions on behalf of the patient after the meeting;

(H)  whether treatment was withheld or withdrawn with the consent of the patient or the person authorized to make treatment decisions on behalf of the patient after the meeting; and

(I)  whether the patient died while receiving life-sustaining treatment at the facility.

(c)  The commission shall publish on its Internet website an annual report compiled by the commission containing aggregate data of the information in each report submitted under Subsection (a), including:

(1) the total number of patients for whom a review by the ethics or medical committee is held under Section 166.046 in the reported year;

(2)  de-identified demographic data of patients, including age, sex, and state and county of residence, and health benefit plan status;

(3)  de-identified data on facilities that initiated the ethics or medical committee meeting, including:

(A)  the county in which the facilities are located;

(B)  the type of facilities; and

(C)  whether the facilities are nonprofit, for-profit, or a public hospital;

(4)  the decisions of the ethics or medical committee;

(5)  the total number of patients transferred to another physician in the same facility;

(6)  the total number of patients transferred to another facility;

(7)  the total number of patients discharged to the patient's home;

(8)  the total number of patients for whom treatment was withheld or withdrawn without the consent of the patient or person authorized to make treatment decisions on behalf of the patient after the ethics or medical committee meeting;

(9)  the total number of patients for whom treatment was withheld or withdrawn with the consent of the patient or person authorized to make treatment decisions on behalf of the patient after the ethics or medical committee meeting;

(10) the total number of patients who died while receiving life-sustaining treatment at the facility;

(11)  the total number of facilities reporting no ethics or medical committee meetings during the reported year; and

(12)  the total number of facilities reporting ethics or medical committee meetings during the reported year.

(d)  The report required by Subsection (c) may not contain any identifying data of a patient, facility, or physician.

SECTION 9.  Section 166.158(c), Health and Safety Code, is amended to read as follows:

(c)  A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures and limitations established under Sections 166.045, 166.0455, and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

SECTION 10.  Section 166.166, Health and Safety Code, is amended to read as follows:

Sec. 166.166.  OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor and comply with a patient's advance directive or a treatment decision to provide life-sustaining treatment for a reason permitted by Section 166.046(a-1) and not prohibited by Section 166.0455, life-sustaining treatment is required to be provided 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 in accordance with Section 166.046.

SECTION 11.  Not later than December 1, 2021, the Supreme Court of Texas shall issue the rules and prescribe the forms necessary for the process established by Section 166.0465, Health and Safety Code, as added by this Act. The rules shall prescribe the method of service of the application under Section 166.0465, Health and Safety Code, and may require filing and service of notices, petitions, and briefs electronically to the extent the Supreme Court of Texas considers appropriate.

SECTION 12.  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 13.  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.