87R11767 SRA-F

By:  Lucio, et al. S.B. No. 1944

A BILL TO BE ENTITLED

AN ACT

relating to end-of-life issues and hospice care.

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

SECTION 1.  Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.012 to read as follows:

Sec. 166.012.  PATIENT AND PROVIDER AUTONOMY. This chapter does not:

(1)  authorize a surrogate or patient's proxy to supersede the patient's wishes or desires, if known by the patient's physician, family member, or surrogate;

(2)  subject to Section 166.046, require a health care provider to continue treatment or care considered outside the appropriate scope of care or in violation of the provider's ethical duties; or

(3)  prohibit a health care provider or facility from performing any test or diagnostic necessary to determine the patient's medical condition or related functions.

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

(a-1)  When an ethics or medical committee review is initiated under this chapter, the ethics or medical committee shall:

(1)  inform the patient or surrogate that the patient or surrogate may discontinue the process under this section by providing written notice to the ethics or medical committee;

(2)  appoint a patient liaison familiar with end-of-life issues and hospice care options to assist the patient or surrogate throughout the process described by this section; and

(3)  advise the patient or surrogate that the patient's attending physician may present medical facts at the meeting of the ethics or medical committee.

(a-2)  The patient's attending physician may attend and present facts at an ethics or medical committee review meeting initiated under this chapter but may not participate as a member of the committee in the review of that case.

(b)  When a meeting of the ethics or medical committee is required under this section, not later than the seventh calendar day before the date scheduled for that meeting, unless this period is waived by mutual agreement, the committee shall provide to the patient or surrogate [~~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)  notice that the patient or surrogate is entitled to receive the continued assistance of a patient liaison to assist the patient or surrogate throughout the review process;

(3)  notice that the patient or surrogate may:

(A)  seek a second opinion at the patient's or surrogate's expense from other medical professionals regarding the patient's medical status and treatment requirements; and

(B)  communicate the resulting information to the members of the committee for consideration before the meeting;

(4)  [~~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

(5) [~~(B)~~]  a copy of the registry list of health care providers, health care facilities, and referral groups that, in compliance with any state laws prohibiting barratry, 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.

(b-1)  The patient or surrogate[~~; and~~

[~~(4)~~]  is entitled to:

(1)  an invitation to [~~(A)~~] attend and participate in the meeting of the ethics or medical committee, excluding the committee's deliberations, if the patient or surrogate elects to attend or participate;

(2)  be accompanied at the meeting by as many as five persons, or more persons at the committee's discretion, for support, subject to the facility's reasonable written attendance policy as necessary to:

(A)  facilitate information sharing and discussion of the patient's medical status and treatment requirements; and

(B)  preserve the order and decorum of the meeting;

(3)  receive a written explanation of the decision reached during the review process;

(4) [~~(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:

(A) [~~(i)~~]  the period of the patient's current admission to the facility; or

(B) [~~(ii)~~]  the preceding 30 calendar days; and

(5) [~~(D)~~]  receive a copy of all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Subdivision (4) [~~Paragraph (C)~~].

(c)  The written explanation required by Subsection (b-1)(3) [~~(b)(4)(B)~~] must be included in the patient's medical record.

(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 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 14th calendar [~~10th~~] day after both the written decision and the patient's medical record required under Subsection (b-1) [~~(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.

SECTION 3.  Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.0465 to read as follows:

Sec. 166.0465.  ETHICS OR MEDICAL COMMITTEE POLICIES; CONFLICTS OF INTEREST AND DISCRIMINATION. Each health care facility that provides review by an ethics or medical committee under Section 166.046 shall adopt and implement a policy on:

(1)  preventing financial and health care professional conflicts of interest that may arise during a review under that section;

(2)  allowing participation on, and interaction with, the committee by telephone, videoconference, or other secure electronic means; and

(3)  prohibiting consideration of a patient's permanent physical or mental disability during the review unless the disability is relevant in determining whether a medical or surgical intervention is medically appropriate.

SECTION 4.  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)(4) [~~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 calendar days [~~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 seven calendar days [~~48 hours~~], if possible.

You are entitled to receive a written explanation of the 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 14 calendar [~~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 14-calendar-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 14 calendar [~~10~~] days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6.  You may ask the appropriate district or county court to extend the 14-calendar-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.

(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)(4) [~~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 calendar days [~~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 seven calendar days [~~48 hours~~], if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

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.

\*"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 5.  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 PROCESSES. (a)  On submission of a health care facility's application to renew its license, a facility in which one or more meetings of an ethics or medical committee are held under this chapter shall file a report with the department that contains aggregate information regarding the number of cases initiated by an ethics or medical committee under Section 166.046 and the disposition of those cases by the facility.

(b)  Aggregate data submitted to the department under this section may include only the following:

(1)  the total number of patients for whom a review by the ethics or medical committee was initiated under Section 166.046(b);

(2)  the number of patients under Subdivision (1) who were transferred to:

(A)  another physician within the same facility; or

(B)  a different facility;

(3)  the number of patients under Subdivision (1) who were discharged to home;

(4)  the number of patients under Subdivision (1) for whom treatment was withheld or withdrawn pursuant to surrogate consent:

(A)  before the decision was rendered following a review under Section 166.046(b);

(B)  after the decision was rendered following a review under Section 166.046(b); or

(C)  during or after the 14-calendar-day period described by Section 166.046(e);

(5)  the average length of stay before a review meeting is held under Section 166.046(b); and

(6)  the number of patients under Subdivision (1) who died while still receiving life-sustaining treatment:

(A)  before the review meeting under Section 166.046(b);

(B)  during the 14-calendar-day period described by Section 166.046(e); or

(C)  during any extension of the 14-calendar-day period described by Section 166.046(e).

(c)  The report required by this section may not contain any data specific to an individual patient or physician.

(d)  The executive commissioner shall adopt rules to:

(1)  establish a standard form for the reporting requirements of this section; and

(2)  post on the department's Internet website the data submitted under Subsection (b) in the format provided by rule.

(e)  Data collected as required by, or submitted to the department under, this section:

(1)  is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant; and

(2)  may not be used in relation to any disciplinary action by a licensing board or other body with professional or administrative oversight over a physician, health care professional acting under the direction of a physician, or health care facility.

SECTION 6.  Section 166.202(a), Health and Safety Code, is amended to read as follows:

(a)  This subchapter applies to a DNR order issued for a patient who has been admitted to [~~in~~] a health care facility or hospital.

SECTION 7.  Sections 166.203(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a)  A DNR order issued for a patient is valid only if a physician providing direct care to the patient [~~patient's attending physician~~] issues the order, the order is dated, and the order:

(1)  is issued in compliance with:

(A)  the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B)  the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C)  the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, [~~or~~] 166.035, 166.082, 166.084, or 166.085;

(D)  the directions of:

(i)  a patient's legal guardian;

(ii)  a patient's [~~or~~] agent under a medical power of attorney acting in accordance with Subchapter D; or

(iii)  a patient's proxy as designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for the patient if the patient becomes incompetent or otherwise mentally or physically incapable of communication; or

(E)  a treatment decision made in accordance with Section 166.039; or

(2)  is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the [~~patient's attending~~] physician issuing the order:

(A)  the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(B)  the DNR order is medically appropriate.

(b)  The DNR order:

(1)  may be issued and entered in any format acceptable under the policies of the health care facility or hospital; and

(2)  takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable.

(c)  Unless notice has already been provided in accordance with Section 166.204(a-1), before [~~Before~~] placing in a patient's medical record a DNR order issued under Subsection (a)(2), a [~~the~~] physician, a physician assistant, a nurse, or another [~~other~~] person acting on behalf of a health care facility or hospital shall:

(1)  inform the patient of the order's issuance; or

(2)  if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A)  the patient's known agent under a medical power of attorney or legal guardian; or

(B)  for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

SECTION 8.  Section 166.204, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  If a physician issues a DNR order under Section 166.203(a)(2), a physician, a physician assistant, a nurse, or another person acting on behalf of a health care facility or hospital shall provide notice of the order to the appropriate persons in accordance with Subsection (a-1) of this section or Section 166.203(c).

(a-1)  Unless notice has already been provided in accordance with Section 166.203(c), if [~~If~~] an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall disclose the order to the individual, provided the individual is:

(1)  the patient's known agent under a medical power of attorney or legal guardian; or

(2)  for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

SECTION 9.  Sections 166.205(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a)  A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if:

(1)  the advance directive on which the DNR order is based is properly revoked in accordance with applicable provisions of this chapter; or

(2)  the patient or the individual at whose direction the DNR order was issued[~~, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:~~

[~~(1)  effectively revokes an advance directive, in accordance with Section 166.042, for which a DNR order is issued under Section 166.203(a); or~~

[~~(2)~~]  expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a).

(b)  A person providing direct care to a patient under the supervision of a physician shall notify the physician of the revocation of the advance directive or the request to revoke a DNR order under Subsection (a).

(c)  The [~~A patient's attending~~] physician who issued [~~may at any time revoke~~] a DNR order issued under Section 166.203(a)(2), or any other attending physician providing direct care to the patient in accordance with applicable hospital policies, may at any time revoke the DNR order.

SECTION 10.  Sections 166.206(a) and (b), Health and Safety Code, are amended to read as follows:

(a)  If a [~~an attending~~] physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation.

(b)  If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the [~~attending~~] physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

SECTION 11.  Section 166.209, Health and Safety Code, is amended to read as follows:

Sec. 166.209.  ENFORCEMENT. (a) Subject to Sections 166.205(d), 166.207, and 166.208, a [~~A~~] physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate the requirements of this subchapter, the person intentionally:

(1)  conceals, cancels, effectuates, or falsifies another person's DNR order; or

(2)  [~~if the person intentionally~~] conceals or withholds personal knowledge of another person's revocation of a DNR order [~~in violation of this subchapter~~].

(a-1)  An offense under Subsection (a) [~~this subsection~~] is a Class A misdemeanor. This section [~~subsection~~] does not preclude prosecution for any other applicable offense.

(b)  Subject to Sections 166.205(d), 166.207, and 166.208, a [~~A~~] physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally:

(1)  failing to effectuate a DNR order in violation of this subchapter; or

(2)  issuing a DNR order in violation of this subchapter.

SECTION 12.  Section 313.004(a), Health and Safety Code, is amended to read as follows:

(a)  If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and does not have a legal guardian or an agent under a medical power of attorney who can concur with the patient's attending physician, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient, may consent to medical treatment on behalf of the patient in concurrence with the patient's attending physician:

(1)  the patient's spouse;

(2)  the patient's reasonably available adult children [~~an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker~~];

(3)  [~~a majority of~~] the patient's parents [~~reasonably available adult children~~];

(4)  the patient's nearest living relative [~~parents~~]; or

(5)  if the patient does not have a legal guardian or an agent under a medical power of attorney and a person listed in this subsection is not available, another licensed physician who is not involved in the direct treatment of the patient [~~the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy~~].

SECTION 13.  Not later than March 1, 2022, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act to Chapter 166, Health and Safety Code.

SECTION 14.  Chapter 166, Health and Safety Code, as amended by this Act, applies only to a review, consultation, disagreement, or other action relating to a health care or treatment decision made on or after April 1, 2022. A review, consultation, disagreement, or other action relating to a health care or treatment decision made before April 1, 2022, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 15.  Chapter 166, Health and Safety Code, as amended by this Act, applies only to a do-not-resuscitate order issued on or after the effective date of this Act. A do-not-resuscitate order issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and that law is continued in effect for that purpose.

SECTION 16.  (a)  A health care facility shall adopt the policy required by Section 166.0465, Health and Safety Code, as added by this Act, not later than April 1, 2022.

(b)  A policy adopted under Section 166.0465, Health and Safety Code, as added by this Act, applies only to an ethics or medical committee review conducted on or after April 1, 2022.

SECTION 17.  This Act takes effect September 1, 2021.