

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

1 treatment choices that best reflect your personal preferences.
2 Provide a copy of your directive to your physician, usual hospital,
3 and family or spokesperson. Consider a periodic review of this
4 document. By periodic review, you can best assure that the
5 directive reflects your preferences.

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

14 DIRECTIVE

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

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

1 _____ I request that all treatments other than those needed
2 to keep me comfortable be discontinued or withheld and
3 my physician allow me to die as gently as possible; OR

4 _____ I request that I be kept alive in this terminal
5 condition using available life-sustaining treatment.

6 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

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

11 _____ I request that all treatments other than those needed
12 to keep me comfortable be discontinued or withheld and
13 my physician allow me to die as gently as possible; OR

14 _____ I request that I be kept alive in this irreversible
15 condition using available life-sustaining treatment.

16 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

17 Pregnancy directive:

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

20 _____
21 _____
22 _____

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

26 Additional requests: (After discussion with your physician,
27 you may wish to consider listing particular treatments in this

1 space that you do or do not want in specific circumstances, such as
2 artificially administered nutrition and hydration, intravenous
3 antibiotics, etc. Be sure to state whether you do or do not want the
4 particular treatment.)

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

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

13 1. _____

14 2. _____

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

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

1 No other person may do so.

2 Signed_____ Date_____ City, County, State of
3 Residence _____

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

18 Witness 1 _____ Witness 2 _____

19 Definitions:

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

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

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

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

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

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

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

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

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

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

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

20 SECTION 3. Section 166.083(b), Health and Safety Code, is
21 amended to read as follows:

22 (b) The standard form of an out-of-hospital DNR order
23 specified by department rule must, at a minimum, contain the
24 following:

25 (1) a distinctive single-page format that readily
26 identifies the document as an out-of-hospital DNR order;

27 (2) a title that readily identifies the document as an

1 out-of-hospital DNR order;

2 (3) the printed or typed name of the person;

3 (4) a statement that the physician signing the
4 document is the attending physician of the person and that the
5 physician is directing health care professionals acting in
6 out-of-hospital settings, including a hospital emergency
7 department, not to initiate or continue certain life-sustaining
8 treatment on behalf of the person, and a listing of those procedures
9 not to be initiated or continued;

10 (5) a statement that the person understands that the
11 person may revoke the out-of-hospital DNR order at any time by
12 destroying the order and removing the DNR identification device, if
13 any, or by communicating to health care professionals at the scene
14 the person's desire to revoke the out-of-hospital DNR order;

15 (6) a statement that the person, if a woman of
16 child-bearing age, may specify in the form the effect the woman's
17 pregnancy has on the out-of-hospital DNR order;

18 (7) places for the printed names and signatures of the
19 witnesses or the notary public's acknowledgment and for the printed
20 name and signature of the attending physician of the person and the
21 medical license number of the attending physician;

22 (8) [~~7~~] a separate section for execution of the
23 document by the legal guardian of the person, the person's proxy, an
24 agent of the person having a medical power of attorney, or the
25 attending physician attesting to the issuance of an out-of-hospital
26 DNR order by nonwritten means of communication or acting in
27 accordance with a previously executed or previously issued

1 directive to physicians under Section 166.082(c) that includes the
2 following:

3 (A) a statement that the legal guardian, the
4 proxy, the agent, the person by nonwritten means of communication,
5 or the physician directs that each listed life-sustaining treatment
6 should not be initiated or continued in behalf of the person; and

7 (B) places for the printed names and signatures
8 of the witnesses and, as applicable, the legal guardian, proxy,
9 agent, or physician;

10 (9) [~~(8)~~] a separate section for execution of the
11 document by at least one qualified relative of the person when the
12 person does not have a legal guardian, proxy, or agent having a
13 medical power of attorney and is incompetent or otherwise mentally
14 or physically incapable of communication, including:

15 (A) a statement that the relative of the person
16 is qualified to make a treatment decision to withhold
17 cardiopulmonary resuscitation and certain other designated
18 life-sustaining treatment under Section 166.088 and, based on the
19 known desires of the person or a determination of the best interest
20 of the person, directs that each listed life-sustaining treatment
21 should not be initiated or continued in behalf of the person; and

22 (B) places for the printed names and signatures
23 of the witnesses and qualified relative of the person;

24 (10) [~~(9)~~] a place for entry of the date of execution
25 of the document;

26 (11) [~~(10)~~] a statement that the document is in effect
27 on the date of its execution and remains in effect until the death

1 of the person or until the document is revoked;

2 (12) [~~(11)~~] a statement that the document must
3 accompany the person during transport;

4 (13) [~~(12)~~] a statement regarding the proper
5 disposition of the document or copies of the document, as the
6 executive commissioner determines appropriate; and

7 (14) [~~(13)~~] a statement at the bottom of the document,
8 with places for the signature of each person executing the
9 document, that the document has been properly completed.

10 SECTION 4. Section 166.084(c), Health and Safety Code, is
11 amended to read as follows:

12 (c) The attending physician and witnesses shall sign the
13 out-of-hospital DNR order in the place of the document provided by
14 Section 166.083(b)(8) [~~166.083(b)(7)~~] and the attending physician
15 shall sign the document in the place required by Section
16 166.083(b)(14) [~~166.083(b)(13)~~]. The physician shall make the fact
17 of the existence of the out-of-hospital DNR order a part of the
18 declarant's medical record and the names of the witnesses shall be
19 entered in the medical record.

20 SECTION 5. Section 166.098, Health and Safety Code, is
21 amended to read as follows:

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

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1 ~~health care professionals to be pregnant]~~.

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