

By: Raymond

H.B. No. 936

A BILL TO BE ENTITLED

AN ACT

relating to certain advance directives.

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 Sections 166.012 and 166.013 to read as follows:

Sec. 166.012. PRESUMPTION OF VALIDITY; LIMITATION OF LIABILITY. (a) In the absence of actual knowledge to the contrary, a physician, health care provider or residential care provider as those terms are defined by Section 166.151, or person acting as an agent for or under the physician's or provider's control may presume that an advance directive is valid under this chapter and has been validly executed by a person authorized to execute the advance directive.

(b) The physician, health care provider, residential care provider, or other person described by Subsection (a) is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for following an advance directive or instructions of an advance directive that the physician, provider, or person presumes is valid under this chapter.

Sec. 166.013. DESIGNATED WRITTEN DIRECTIVE OR MEDICAL POWER OF ATTORNEY. (a) The executive commissioner shall review and designate documents meeting the requirements of this section to be

1 recognized in this state as a valid form for a written directive or
2 medical power of attorney.

3 (b) A document designated under this section must:

4 (1) be promulgated by a state or national nonprofit
5 organization or association;

6 (2) be written in plain language;

7 (3) include a field for:

8 (A) a declarant's name; and

9 (B) the date the document is executed;

10 (4) for a document to be used as a written directive,
11 allow a declarant to provide health care instructions;

12 (5) for a document to be used to appoint an agent under
13 a medical power of attorney:

14 (A) allow a declarant to appoint an agent;

15 (B) allow a declarant to specify or limit the
16 health care decisions an agent may make for the declarant;

17 (C) meet the requirements of Subchapter D other
18 than Section 166.164, including execution in accordance with
19 Section 166.154; and

20 (D) prohibit the appointment of two or more
21 agents with concurrent authority to make a health care decision on
22 behalf of the same declarant; and

23 (6) require the declarant to:

24 (A) sign and date the document in the presence of
25 two witnesses who qualify under Section 166.003, at least one of
26 whom qualifies under Section 166.003(2); or

27 (B) sign the document and have the signature

1 acknowledged before a notary public.

2 (c) On designating a document in accordance with this
3 section, the executive commissioner shall:

4 (1) place in a conspicuous manner on the first page of
5 the document the commission's logo or similar acknowledgment
6 evidencing the document is designated as a valid form of a written
7 directive or medical power of attorney; and

8 (2) post on the commission's Internet website a link to
9 the document.

10 (d) The commission shall post on the commission's Internet
11 website instructions for a state or national nonprofit organization
12 or association to submit a document to be considered under this
13 section. The executive commissioner shall complete a review of the
14 document not later than six months after the date the document is
15 submitted.

16 SECTION 2. Section 166.031(1), Health and Safety Code, is
17 amended to read as follows:

18 (1) "Directive" means an instruction made under
19 Section 166.032, 166.034, or 166.035 to administer, withhold, or
20 withdraw life-sustaining treatment in the event of a terminal or
21 irreversible condition. The term includes an instruction made in a
22 document designated as a valid form of written directive under
23 Section 166.013 and executed as provided by this subchapter.

24 SECTION 3. Section 166.032(c), Health and Safety Code, is
25 amended to read as follows:

26 (c) A declarant may include in a directive directions other
27 than those provided in a document designated as a valid form of

1 written directive under Section 166.013 or the form prescribed by
2 Section 166.033 and may designate in a directive a person to make a
3 health care or treatment decision for the declarant in the event the
4 declarant becomes incompetent or otherwise mentally or physically
5 incapable of communication.

6 SECTION 4. Subchapter B, Chapter 166, Health and Safety
7 Code, is amended by adding Sections 166.0325 and 166.0335 to read as
8 follows:

9 Sec. 166.0325. PERMISSIBLE FORMS OF WRITTEN DIRECTIVE. A
10 written directive may be:

11 (1) in a document designated as a valid form of written
12 directive under Section 166.013;

13 (2) in a form that complies with Section 166.033; or

14 (3) in another form that satisfies the requirements of
15 this chapter.

16 Sec. 166.0335. DIRECTIONS RELATING TO CARE OTHER THAN
17 LIFE-SUSTAINING TREATMENT. (a) A declarant may include in a
18 written directive instructions regarding personal, spiritual, or
19 emotional care or additional care other than instructions to
20 administer, withhold, or withdraw life-sustaining treatment.

21 (b) The instructions of a written directive described by
22 Subsection (a) do not impose a duty, requirement, or obligation on a
23 physician, health care provider or residential care provider as
24 those terms are defined by Section 166.151, or person acting as an
25 agent for or under the physician's or provider's control to comply
26 with the instructions, but the physician, provider, or other person
27 may make reasonable accommodations for the instructions.

1 SECTION 5. Section 166.036(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) Except as provided by Section 166.032(b-1) or
4 166.013(b)(6)(B), a written directive executed under Section
5 166.032 [~~166.033~~] or 166.035 is effective without regard to whether
6 the document has been notarized.

7 SECTION 6. Section 166.102(b), Health and Safety Code, is
8 amended to read as follows:

9 (b) When responding to a call for assistance, emergency
10 medical services personnel:

11 (1) shall honor only a properly executed or issued
12 out-of-hospital DNR order or prescribed DNR identification device
13 in accordance with this subchapter; and

14 (2) have no duty to review, examine, interpret, or
15 honor a person's other written directive, including a written
16 directive in a document designated under Section 166.013 or the
17 form prescribed by Section 166.033.

18 SECTION 7. Subchapter D, Chapter 166, Health and Safety
19 Code, is amended by adding Section 166.163 to read as follows:

20 Sec. 166.163. PERMISSIBLE FORMS OF MEDICAL POWER OF
21 ATTORNEY. Notwithstanding Section 166.164, a medical power of
22 attorney may only be in a form:

23 (1) designated by the executive commissioner as a
24 valid form for a medical power of attorney under Section 166.013; or

25 (2) substantially in compliance with the form
26 prescribed by Section 166.164.

27 SECTION 8. As soon as practicable after the effective date

1 of this Act, the executive commissioner of the Health and Human
2 Services Commission shall develop and post on the commission's
3 Internet website instructions for a state or national nonprofit
4 organization or association to submit to the commission a document
5 for consideration as a valid form for a written directive or medical
6 power of attorney under Section 166.013, Health and Safety Code, as
7 added by this Act.

8 SECTION 9. This Act takes effect September 1, 2021.