88R11055 LRM-F

By:  Klick H.B. No. 3162

A BILL TO BE ENTITLED

AN ACT

relating to advance directives and health care treatment decisions made by or on behalf of patients, including a review of those directives and decisions.

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

SECTION 1.  Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.0445 to read as follows:

Sec. 166.0445.  LIMITATION ON LIABILITY FOR PERFORMING REQUIRED MEDICAL PROCEDURE. (a) A physician or health care professional acting under the direction of a physician is not subject to civil liability for conducting a medical procedure required under Section 166.046(d-1).

(b)  A physician or health care professional acting under the direction of a physician is not subject to criminal liability for conducting a medical procedure required under Section 166.046(d-1) unless:

(1)  the physician or health care professional in conducting the medical procedure acted with a specific intent to cause the death of the patient and that conduct hastened the patient's death; and

(2)  the hastening of the patient's death is not attributable to the risks associated with the medical procedure.

(c)  A physician or health care professional acting under the direction of a physician has not engaged in unprofessional conduct by conducting a medical procedure required under Section 166.046(d-1) unless the physician or health care professional fails to exercise reasonable medical judgment in conducting the medical procedure. For purposes of this subsection, the standard of care that a physician or health care professional must exercise is the degree of care a physician or health care professional of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

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

(a)  This section applies only to the treatment and care of a qualified patient who is declared incompetent or otherwise mentally or physically incapable of communication.

(a-1)  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, 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-2)  An ethics or medical committee that reviews a physician's refusal to honor a patient's advance directive or health care treatment decision under Subsection (a-1) shall consider the patient's well-being in conducting the review. If the review requires the committee to make a determination on whether life-sustaining treatment requested in a patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate, the committee shall consider whether provision of the life-sustaining treatment:

(1)  will prolong the natural process of dying or hasten the patient's death;

(2)  will cause harm or undesirable side effects without a proportionate benefit to the patient;

(3)  will exacerbate life-threatening medical problems that outweigh the treatment benefits;

(4)  will result in substantial irremediable physical pain or other measurable suffering that outweigh the treatment benefits;

(5)  without regard to any judgment on the patient's quality of life, will be medically ineffective at:

(A)  improving the patient's current condition; or

(B)  reducing the patient's current medical support level;

(6)  is consistent with the prevailing standard of care; or

(7)  is contrary to the patient's clearly documented desires.

(b)  The [~~patient or the~~] person responsible for the patient's health care decisions [~~of the individual~~] who has made the decision regarding the directive or treatment decision or, for a patient for whom a review is conducted under Subsection (a-1) and who did not designate a person to make health care or treatment decisions or who does not have a legal guardian or agent under a medical power of attorney, a person in the priority order described by Section 166.039(b):

(1)  must [~~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 in writing [~~of the committee review process~~] not less than seven calendar days [~~48 hours~~] before the meeting called to discuss the patient's directive, unless the time period is waived by written mutual agreement, of:

(A)  the ethics or medical committee review process and any other related policies and procedures adopted by the health care facility, including any attendance and confidentiality policy described by Subsection (b-1);

(B)  the rights described in Subdivisions (3)(A)-(D);

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

(D)  the name, title, and work contact information of the facility's personnel who, in the event of a disagreement described by Subsection (d-1), will be responsible for overseeing the transfer of the patient to another physician or facility that is willing to comply with the directive; and

(E)  the factors the committee is required to consider under Subsection (a-2);

(2) [~~(3)~~]  at the time of being [~~so~~] informed under Subdivision (1), 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

(3) [~~(4)~~]  is entitled to:

(A)  attend and participate in the meeting;

(B)  receive before or during the meeting a written statement of the full name and title of each committee member who will participate in the meeting;

(C)  subject to Subsection (b-2):

(i)  be accompanied at the meeting by up to 10 individuals selected by the patient or surrogate, including legal counsel, physicians, health care professionals, or patient advocates; and

(ii)  have an opportunity during the meeting to either directly or through another individual:

(a)  explain the justification for the health care or treatment request made by or on behalf of the patient;

(b)  respond to information relating to the patient that is submitted or presented during the meeting; and

(c)  state any concerns the patient or surrogate has regarding compliance with this section or Section 166.0465;

(D)  receive a written notice [~~explanation~~] of:

(i)  the decision reached during the review process;

(ii)  an explanation of the decision, including, if applicable, the committee's reasoning for affirming that life-sustaining treatment requested in the patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate;

(iii)  a statement that the committee has complied with Subsection (a-2) and Section 166.0465; and

(iv)  a list of the health care facilities contacted before the meeting as part of the transfer efforts made under Subsection (d) and, for each facility on the list that denied the request to transfer the patient, any reason provided by the facility for denying the request;

(E) [~~(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

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

(b-1)  A health care facility may adopt and implement a written attendance and confidentiality policy for meetings held under this section that is reasonable and necessary to:

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

(2)  preserve the effectiveness of the meeting.

(b-2)  Notwithstanding Subsection (b)(3), the following individuals may not participate in the deliberations of an ethics or medical committee under this section:

(1)  the physicians or health care professionals providing treatment and care to the patient; or

(2)  the patient, the person entitled to written notice of the meeting under Subsection (b)(1), or any person attending under Subsection (b)(3)(C).

(c)  The written notices [~~explanation~~] required by Subsections (b)(3)(D)(i) and (ii) [~~Subsection (b)(4)(B)~~] must be included in the patient's medical record.

(d)  After written notice is provided under Subsection (b)(1), [~~If~~] the patient's attending physician [~~, the patient, or the person responsible for the health care decisions of the individual does not agree with the 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.

(d-1)  In this subsection, "medical procedure" means only a tracheostomy or a percutaneous endoscopic gastrostomy. If the person responsible for a patient's health care decisions does not agree with the decision reached during the review process under Subsection (b), the attending physician or another physician responsible for the care of the patient shall perform on the patient each medical procedure that satisfies the following conditions:

(1)  in the physician's judgment, the medical procedure is reasonable and necessary to help effect the patient's transfer under Subsection (d);

(2)  based on the physician's discussion with the facility, performing the medical procedure will increase the likelihood of effecting the patient's transfer under Subsection (d) to a health care facility that is willing to consider accepting or able to accept the patient;

(3)  in the physician's medical judgment, performing the medical procedure is:

(A)  within the prevailing standard of medical care; and

(B)  not medically contraindicated or medically inappropriate under the circumstances;

(4)  the physician has the training and experience to perform the medical procedure;

(5)  if the patient is receiving care in a health care facility, the physician has been granted privileges by the facility that authorize the physician to perform the medical procedure at the facility;

(6)  the health care facility at which the medical procedure will be performed has the resources for the performance of the procedure; and

(7)  the person responsible for the health care decisions of the patient provides consent on behalf of the patient for the medical procedure.

(e)  If the patient's advance directive [~~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 21st business [~~10th~~] day after both the written 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 extend the time [~~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.

(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 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 DECISION RELATED TO PATIENT DISABILITY. (a) In this section, "disability" has the meaning assigned by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b)  During the review process under Section 166.046(b), the ethics or medical committee may not consider a patient's disability that existed before the patient's current admission unless the disability is relevant in determining whether life-sustaining treatment 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)(2)(A) [~~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 21 business [~~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 that [~~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 21 business [~~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 that [~~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.

\*"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)(2)(A) [~~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) Not later than the 180th day after the date written notice is provided under Section 166.046(b)(1), a health care facility shall prepare and submit to the department a report that contains information on:

(1)  the number of days that elapsed from the patient's admission to the facility to the date notice was provided under Section 166.046(b)(1);

(2)  whether the ethics or medical committee met to review the case under Section 166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under Section 166.046(b)(1) to the date the meeting was held;

(3)  whether the patient was:

(A)  transferred to a physician within the same facility who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of a patient;

(B)  transferred to a different facility; or

(C)  discharged from the facility to a private residence or other setting that is not a health care facility;

(4)  whether the patient died while receiving life-sustaining treatment;

(5)  whether life-sustaining treatment was withheld or withdrawn from the patient after expiration of the time described by Section 166.046(e);

(6)  the age group of the patient selected from the following categories:

(A)  17 years of age or younger;

(B)  18 years of age or older and younger than 66 years of age; or

(C)  66 years of age or older;

(7)  the health insurance coverage status of the patient selected from the following categories:

(A)  private health insurance coverage;

(B)  public health plan coverage; or

(C)  uninsured;

(8)  the patient's sex; and

(9)  the patient's race.

(b)  The department shall ensure information provided in each report submitted by a health care facility under Subsection (a) is kept confidential and not disclosed in any manner, except as provided by this section.

(c)  Not later than April 1 of each year, the department shall prepare and publish on the department's Internet website a report that contains:

(1)  aggregate information compiled from the reports submitted to the department under Subsection (a) during the preceding year on:

(A)  the total number of written notices provided under Section 166.046(b)(1);

(B)  the average number of days described by Subsection (a)(1);

(C)  the total number of meetings held by ethics or medical committees to review cases under Section 166.046;

(D)  the average number of days described by Subsection (a)(2);

(E)  the total number of patients described by Subsections (a)(3)(A), (B), and (C);

(F)  the total number of patients described by Subsection (a)(4); and

(G)  the total number of patients for whom life-sustaining treatment was withheld or withdrawn after expiration of the time described by Section 166.046(e); and

(2)  if the total number of reports submitted under Subsection (a) for the preceding year is 10 or more, aggregate information compiled from those reports on the total number of patients categorized by:

(A)  sex;

(B)  race;

(C)  age group, based on the categories described by Subsection (a)(6); and

(D)  health insurance coverage status, based on the categories described by Subsection (a)(7).

(d)  If the department receives fewer than 10 reports under Subsection (a) for inclusion in an annual report required under Subsection (c), the department shall include in the next annual report prepared after the department receives 10 or more reports the aggregate information for all years for which the information was not included in a preceding annual report. The department shall include in the next annual report a statement that identifies each year during which an underlying report was submitted to the department under Subsection (a).

(e)  The annual report required by Subsection (c) or (d) may not include any information that could be used alone or in combination with other reasonably available information to identify any individual, entity, or facility.

(f)  The executive commissioner shall adopt rules to:

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

(2)  protect and aggregate any information the department receives under this section.

(g)  Information 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;

(2)  may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional acting under the direction of a physician, or health care facility; and

(3)  is not public information or subject to disclosure under Chapter 552, Government Code.

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 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 [~~the patient's attending physician issues the order,~~] the order is dated[~~,~~] and [~~the order~~]:

(1)  is issued by a physician providing direct care to the patient 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 a patient's:

(i)  legal guardian;

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

(iii)  proxy as designated and authorized by a directive executed 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 issued by the patient's attending physician and:

(A)  the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions; and

(B)  [~~,~~] in the reasonable medical judgment of the patient's attending physician:

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

(ii) [~~(B)~~]  the DNR order is medically appropriate.

(b)  The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable and may be issued in a format acceptable under the policies of the health care facility or hospital.

(c)  Unless notice is 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, physician assistant, nurse, or 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) or Section 166.203(c).

(a-1)  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, unless notice has been provided in accordance with Section 166.203(c), 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) and (b), 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 [~~the patient or, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent~~]:

(1)  the advance directive that serves as the basis of the DNR order is properly revoked in accordance with this chapter; [~~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)  the patient 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); or

(3)  the DNR order was issued under Section 166.203(a)(1)(D) or (E) or Section 166.203(a)(2), and the person responsible for making health care or treatment decisions on behalf of the patient expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke the DNR order.

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

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 and Subsection (c), a [~~A~~] physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate this subchapter, the person:

(1)  [~~intentionally~~] conceals, cancels, effectuates, or falsifies another person's DNR order in violation of this subchapter; 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.

(c)  A person does not commit an offense under Subsection (a) if the person's act or omission was based on a reasonable belief that the act or omission was in compliance with the wishes of the patient or the person having authority to make health care treatment decisions on behalf of the patient.

SECTION 12.  Section 313.004, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) 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 is reasonably available, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is reasonably 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:

(1)  the patient's spouse;

(2)  the patient's [~~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~~]; or

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

[~~(5) 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~~].

(a-1)  If the patient does not have a legal guardian, an agent under a medical power of attorney, or a person listed in Subsection (a) who is reasonably available, a treatment decision may be concurred by another physician who is not involved in the treatment of the patient.

(c)  Any medical treatment consented to under Subsection (a) or (a-1) must be based on knowledge of what the patient would desire, if known.

SECTION 13.  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 the effective date of this Act. A review, consultation, disagreement, or other action relating to a health care or treatment decision made before the effective date of this Act 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 14.  Section 166.209, Health and Safety Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 15.  This Act takes effect September 1, 2023.