88R3162 JG-D

By:  Johnson S.B. No. 2039

A BILL TO BE ENTITLED

AN ACT

relating to health care practitioner authority regarding certain do-not-resuscitate orders, including the use of electronic copies and photographs of out-of-hospital do-not-resuscitate orders.

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

SECTION 1.  Section 166.081(6), Health and Safety Code, is amended to read as follows:

(6)  "Out-of-hospital DNR order":

(A)  means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by department rule under Section 166.083, prepared and signed as required by this subchapter [~~by the attending physician of a person~~], that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i)  cardiopulmonary resuscitation;

(ii)  advanced airway management;

(iii)  artificial ventilation;

(iv)  defibrillation;

(v)  transcutaneous cardiac pacing; and

(vi)  other life-sustaining treatment specified by department rule under Section 166.101(a); and

(B)  does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

SECTION 2.  Sections 166.082(b) and (c), Health and Safety Code, are amended to read as follows:

(b)  Except as provided by this subsection, the declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The declarant's attending physician, or a physician assistant or an advanced practice registered nurse providing care to [~~of~~] the declarant, must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record. The declarant, in lieu of signing in the presence of witnesses, may sign the out-of-hospital DNR order and have the signature acknowledged before a notary public.

(c)  If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician, or a physician assistant or advanced practice registered nurse providing care to the person, may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician, physician assistant, or advanced practice registered nurse shall sign the order in lieu of the person signing under Subsection (b) and may use a digital or electronic signature authorized under Section 166.011.

SECTION 3.  Sections 166.083(b) and (d), Health and Safety Code, are amended to read as follows:

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

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

(2)  a title that readily identifies the document as an out-of-hospital DNR order;

(3)  the printed or typed name of the person who executed or issued the document or for whom the document was executed or issued;

(4)  a statement that the physician, physician assistant, or advanced practice registered nurse signing the document is the person's attending physician, or a physician assistant or advanced practice registered nurse providing care to [~~of~~] the person, and that [~~the physician is directing~~] health care professionals acting in out-of-hospital settings, including a hospital emergency department, are directed not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

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

(6)  places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the person's attending physician, or a physician assistant or an advanced practice registered nurse providing care to [~~of~~] the person, and the professional's [~~medical~~] license number [~~of the attending physician~~];

(7)  a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, [~~or~~] the attending physician, the physician assistant, or the advanced practice registered nurse attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A)  a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, [~~or~~] the physician, the physician assistant, or the advanced practice registered nurse directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B)  places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, [~~or~~] physician, physician assistant, or advanced practice registered nurse;

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

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

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

(9)  a place for entry of the date of execution of the document;

(10)  a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11)  a statement that the document must accompany the person during transport;

(12)  a statement regarding the proper disposition of the document or copies of the document, as the executive commissioner determines appropriate; and

(13)  a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(d)  A photocopy or other complete facsimile, including an electronic copy or photograph, of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

SECTION 4.  Sections 166.084(b) and (c), Health and Safety Code, are amended to read as follows:

(b)  A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the declarant's attending physician, or a physician assistant or advanced practice registered nurse providing care to the declarant, and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c)  The attending physician, the physician assistant, or the advanced practice registered nurse and witnesses shall sign the out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(7) and the attending physician, the physician assistant, or the advanced practice registered nurse shall sign the document in the place required by Section 166.083(b)(13). The physician, physician assistant, or advanced practice registered nurse shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered in the medical record.

SECTION 5.  Sections 166.087(b) and (c), Health and Safety Code, are amended to read as follows:

(b)  If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the adult person's attending physician, or a physician assistant or advanced practice registered nurse providing care to the person, and the designated person shall comply with the out-of-hospital DNR order.

(c)  If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the person's attending physician, or a physician assistant or advanced practice registered nurse providing care to the person, shall comply with the out-of-hospital DNR order unless the physician, physician assistant, or advanced practice registered nurse believes that the order does not reflect the person's present desire.

SECTION 6.  Sections 166.088(a), (b), and (f), Health and Safety Code, are amended to read as follows:

(a)  If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the person's attending physician, or a physician assistant or advanced practice registered nurse providing care to the person, and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b)  If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the person's attending physician, or a physician assistant or advanced practice registered nurse providing care to the person, and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(f)  If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician, physician assistant, or advanced practice registered nurse who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

SECTION 7.  Sections 166.089(d), (h), and (i), Health and Safety Code, are amended to read as follows:

(d)  The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1)  written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order;

(2)  a date in the place designated on the form for the date the order was executed or issued; and

(3)  the signature or digital or electronic signature of the declarant or persons executing or issuing the order and the attending physician, a physician assistant, or an advanced practice registered nurse in the appropriate places designated on the form for indicating that the order form has been properly completed.

(h)  An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1)  identify themselves as the declarant or as the attending physician of the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued, a physician assistant or advanced practice registered nurse providing care to the person, or the legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2)  request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule be initiated or continued.

(i)  If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician, a physician assistant, or an advanced practice registered nurse on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons designated as having authority to make health care treatment decisions on behalf of the person for whom the order was executed or issued, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

SECTION 8.  Section 166.092(b), Health and Safety Code, is amended to read as follows:

(b)  An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the declarant's attending physician, or the physician assistant or advanced practice registered nurse providing care to the declarant, at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the executive commissioner and any applicable local out-of-hospital DNR protocol. The attending physician, [~~or~~] the physician's designee, the physician assistant, or the advanced practice registered nurse shall record in the declarant's [~~person's~~] medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician, physician assistant, or advanced practice registered nurse received notice of the revocation. The attending physician, [~~or~~] the physician's designee, the physician assistant, or the advanced practice registered nurse shall also enter the word "VOID" on each page of the copy of the order in the declarant's [~~person's~~] medical record.

SECTION 9.  Section 166.095(c), Health and Safety Code, is amended to read as follows:

(c)  If a person's [~~an~~] attending physician, or a physician assistant or advanced practice registered nurse providing care to the person, refuses to execute or comply with an out-of-hospital DNR order, the physician, physician assistant, or advanced practice registered nurse shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician, physician assistant, or advanced practice registered nurse who is willing to execute or comply with an out-of-hospital DNR order.

SECTION 10.  The heading to Section 166.102, Health and Safety Code, is amended to read as follows:

Sec. 166.102.  [~~PHYSICIAN'S~~] DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL.

SECTION 11.  Section 166.102(a), Health and Safety Code, is amended to read as follows:

(a)  Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's, physician assistant's, or advanced practice registered nurse's do-not-resuscitate order.

SECTION 12.  Section 166.203(a), Health and Safety Code, is amended to read as follows:

(a)  A DNR order issued for a patient is valid only if the patient's attending physician, or a physician assistant or advanced practice registered nurse providing care to the patient, 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;

(D)  the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Subchapter D; 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:

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

(B)  the DNR order is medically appropriate.

SECTION 13.  Sections 166.205(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a)  A physician, physician assistant, or advanced practice registered nurse 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)  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, physician assistant, or advanced practice registered nurse shall notify the physician, physician assistant, or advanced practice registered nurse of the request to revoke a DNR order under Subsection (a).

(c)  A patient's attending physician, or a physician assistant or advanced practice registered nurse providing care to the patient, may at any time revoke a DNR order issued under Section 166.203(a)(2).

SECTION 14.  Section 166.083(d), Health and Safety Code, as amended by this Act, is intended to clarify rather than change existing law.

SECTION 15.  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, 2023.