By: Deuell, Lucio S.B. No. 303

(In the Senate - Filed January 31, 2013; February 5, 2013, read first time and referred to Committee on Health and Human Services; April 15, 2013, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 0; April 15, 2013, sent to printer.)

COMMITTEE VOTE

	Yea	Nay	Absent	PNV
Nelson	X			
Deuell	X			
Huffman			X	
Nichols	X			
Schwertner	X			
Taylor			X	
Uresti	X			
West	X			
Zaffirini	X			

COMMITTEE SUBSTITUTE FOR S.B. No. 303 By: Deuell

A BILL TO BE ENTITLED
AN ACT

relating to advance directives and health care and treatment decisions.

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

SECTION 1. Section 166.002, Health and Safety Code, is amended by amending Subdivisions (2) and (10) and adding Subdivision (16) to read as follows:

(2) "Artificially administered [~~Artificial~~] nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

(10) "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 [~~artificial~~] 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.

(16) "Surrogate" means a legal guardian, an agent under a medical power of attorney, or a person authorized under Section 166.039(b) to make a health care or treatment decision for an incompetent patient under this chapter.

SECTION 2. Subchapter A, Chapter 166, Health and Safety Code, is amended by adding Section 166.012 to read as follows:

Sec. 166.012. STATEMENT RELATING TO DO-NOT-ATTEMPT-RESUSCITATION ORDERS. (a) In this section, "do-not-attempt-resuscitation order" or "DNAR order" means an order instructing health care professionals not to attempt cardiopulmonary resuscitation of the patient if circulatory or respiratory function ceases.

(b) Upon admission, a health care facility shall provide a patient or surrogate written notice of the facility's policies regarding the rights of the patient or surrogate under this section.

(c) Before placing a do-not-attempt-resuscitation (DNAR) order in a patient's medical record, the physician or the facility's personnel shall inform the patient or, if the patient is incompetent, make a reasonably diligent effort to contact or cause

to be contacted the surrogate. The facility shall establish a policy regarding the notification required under this section. The policy must authorize the notification to be given verbally by a physician or facility personnel.

(d) The DNAR order takes effect at the time it is written in the patient's chart or otherwise placed in the patient's medical record.

(e) If the patient or surrogate disagrees with the DNAR order being placed in or removed from the medical record, the patient or surrogate may request in writing and is entitled to a consultation or a review of the disagreement by the ethics or medical committee in the manner described by Section 166.046, with the patient or surrogate afforded all rights provided to the surrogate under that section, and with the physician afforded all protections from liability provided under Section 166.045(d). The patient or surrogate may discontinue the process initiated under Section 166.046 by providing written notice to the ethics or medical committee.

(f) A DNAR order in the patient's medical record at the time a consultation or review is requested under Subsection (e) must be removed from the patient's medical record at that time. A DNAR order may not be placed in the patient's medical record until the process initiated under Section 166.046 is concluded or discontinued at the request of the patient or surrogate.

(g) Subsection (c) does not apply to a DNAR order placed in the medical record of a patient:

(1) whose death, based on reasonable medical judgment, is imminent despite attempted resuscitation;

(2) for whom, based on reasonable medical judgment, resuscitation would be medically ineffective and there is insufficient time to contact the surrogate; or

(3) for whom the DNAR order is consistent with a patient's or surrogate's request or a patient's advance directive to not attempt resuscitation.

(h) Subsection (e) does not apply to a DNAR order placed in the medical record of a patient with respect to whom, based on reasonable medical judgment, death is imminent and resuscitation would be medically ineffective.

(i) This section does not create a cause of action or liability against a physician, health professional acting under the direction of a physician, or health care facility.

(j) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority if the actor has complied with the procedures under this section and Section 166.046.

(k) This section does not affect the immunity from liability under Section 74.151, Civil Practice and Remedies Code.

(l) This section does not apply to an assisted living facility licensed under Chapter 247.

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

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

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

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

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

OR

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

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

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

OR

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered [~~artificial~~] nutrition and hydration [~~fluids~~], intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

_____

_____

_____

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

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

1. _____

2. _____

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

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within

minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed_____ Date_____ City, County, State of Residence _____

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

Witness 1 _____ Witness 2 _____

Definitions:

"Artificially administered [~~Artificial~~] nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

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

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

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

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

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

"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 [~~artificial~~] hydration [~~and nutrition~~]. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

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

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may

wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

SECTION 4. Section 166.039, Health and Safety Code, is amended by adding Subsections (a-1) and (b-1) and amending Subsections (e) and (f) to read as follows:

(a-1) In making the decision described by Subsection (a), the attending physician may consult with a physician who previously treated the patient if the previous physician:

(1) is known and available, regardless of whether the previous physician has discontinued providing care for the patient or does not have privileges at the treating facility;

(2) had a conversation with the patient on end-of-life issues at a time when the patient was competent and capable of communication; and

(3) documented the conversation described by Subdivision (2) in the patient's medical record.

(b-1) The attending physician and the health care facility's personnel shall make a reasonably diligent effort to contact or cause to be contacted the persons listed in Subsection (b) in the order of priority under Subsection (b) until one of the persons is contacted or the list is exhausted regarding making a health care or treatment decision for the patient.

(e) If the patient does not have a legal guardian or agent under a medical power of attorney and a person listed in Subsection (b) is not available, a health care or treatment decision made under Subsection (b) must be concurred with [~~in~~] by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult [~~qualified~~] patient has not executed or issued a directive does not create a presumption regarding the provision, withholding, or withdrawal of [~~that the patient does not want a treatment decision to be made to withhold or withdraw~~] life-sustaining treatment.

SECTION 5. Subsection (c), Section 166.045, Health and Safety Code, is amended to read as follows:

(c) If an attending physician disagrees with and refuses to comply with a patient's directive or a health care or treatment decision of a patient or of a surrogate made on behalf of an incompetent patient, and the attending physician does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the health care [~~directive~~] or treatment decision.

SECTION 6. The heading to Section 166.046, Health and Safety Code, is amended to read as follows:

Sec. 166.046. PROCEDURE IF PHYSICIAN DISAGREES WITH AND REFUSES TO COMPLY WITH HEALTH CARE [~~NOT EFFECTUATING A DIRECTIVE~~] OR TREATMENT DECISION.

SECTION 7. Section 166.046, Health and Safety Code, is amended by amending Subsections (a), (b), (c), (d), (e), (e-1), (g), and (h) and adding Subsections (a-1), (a-2), (a-3), (a-4), (a-5), (a-6), (a-7), (a-8), and (b-1) to read as follows:

(a) If an attending physician disagrees with and refuses to comply with [~~honor~~] a patient's advance directive or a health care or treatment decision [~~made by or on behalf~~] of a patient or of a surrogate made on behalf of an incompetent patient, the disagreement and the physician's refusal shall be reviewed by an ethics or medical committee under this section. The ethics or medical committee of a facility other than a nursing home licensed under Chapter 242 may not include any health care provider involved in the direct care of a patient whose treatment the committee reviews or a subcommittee of such an ethics or medical committee.

(a-1) If the patient has been diagnosed with a terminal condition, the ethics or medical committee shall determine if, based on reasonable medical judgment, the treatment requested by

the patient or, if the patient is incompetent, by the surrogate would:

(1) hasten the patient's death;

(2) seriously exacerbate other major medical problems not outweighed by the benefit of the provision of the treatment;

(3) result in substantial irremediable physical pain or discomfort not outweighed by the benefit of the provision of the treatment; or

(4) be medically ineffective in prolonging the patient's life.

(a-2) If the patient has been diagnosed with an irreversible nonterminal condition, the ethics or medical committee may sustain the decision to withdraw life-sustaining treatment requested by the patient or, if the patient is incompetent, by the surrogate only if, based on reasonable medical judgment, the treatment would:

(1) threaten the patient's life;

(2) seriously exacerbate other major medical problems not outweighed by the benefit of the provision of the treatment;

(3) result in substantial irremediable physical pain or discomfort not outweighed by the benefit of the provision of the treatment; or

(4) be medically ineffective in prolonging the patient's life.

(a-3) In all deliberations under this section, the ethics or medical committee should strive to honor the values of each unique patient. All patients will be treated equally without regard to permanent physical or mental disabilities, age, gender, religion, ethnic background, or financial or insurance status. The committee should make the same decision about whether or not a requested treatment is medically appropriate for individuals with or without a permanent disability, advanced age, gender, religious or cultural differences, or financial circumstances.

(a-4) The fact that life-sustaining treatment is delivered in an intensive care unit is not itself sufficient to justify the refusal to provide that treatment. This section does not authorize withholding or withdrawing pain management medication, medical procedures considered necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(a-5) [~~The attending physician may not be a member of that committee.~~] The patient shall be given life-sustaining treatment pending [~~during~~] the ethics or medical committee's review.

(a-6) When an ethics or medical committee review has been 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) appoint one or more representatives of the ethics or medical committee to conduct an advisory ethics consultation with the patient or surrogate, the outcome of which must be documented in the patient's medical record by a representative of the committee.

(a-7) If a disagreement over a health care or treatment decision persists following the consultation described in Subsection (a-6)(3), the ethics or medical committee shall hold a meeting to review the disagreement.

(a-8) The ethics or medical committee in holding a review required under this section, including a review following a consultation described by Subsection (a-6)(3), shall advise the patient or surrogate that the patient's attending physician may present medical facts at the meeting. The patient's attending physician may attend and present facts but may not participate as a member of the committee in the case being evaluated.

(b) When a meeting of the ethics or medical committee is required under this section [~~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) not later than the seventh calendar day before the scheduled date of the meeting required under this section, unless the time period is waived by mutual agreement, the committee shall provide to the patient or surrogate:

(A) [~~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;

(B) 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 process described in this section;

(C) notice that the patient or surrogate may 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 communicate the resulting information to the members of the committee for consideration before the meeting;

(D) [~~(2) 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

(E) [~~(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 [~~Texas Health Care Information Council~~] under Section 166.053; and

(2) if requested in writing, the patient or surrogate is entitled to receive from the facility:

(A) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with any reasonably available diagnostic results and reports; and

(B) not later than the fifth calendar day after the date of the request or at another time specified by mutual agreement, a free copy of the remainder of the patient's medical record, if any, related to the current admission to the facility.

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

[~~(4)~~] is entitled to:

(1) [~~(A)~~] attend and participate in the meeting of the ethics or medical committee, excluding the committee's deliberations;

(2) be accompanied at the meeting by up to 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; and

(3) [~~(B)~~] receive a written explanation of the decision reached during the review process.

(c) The written explanation required by Subsection (b-1)(3) [~~(b)(2)(B)~~] must be included in the patient's medical record.

(d) If the attending physician, the patient, or the surrogate [~~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 and the facility shall make a reasonably diligent [~~reasonable~~] effort to

transfer the patient to a physician of the patient's or surrogate's choice who is willing to accept the patient [~~comply with the directive~~]. The [~~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.

(e) If the patient or surrogate [~~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 [~~review process~~] 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 considered necessary to provide comfort care, or any other medical 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 calendar [~~10th~~] day after the written decision required under Subsection (b-1) [~~(b)~~] is provided to the patient or the surrogate [~~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) seriously exacerbate other major medical problems not outweighed by the benefit of the provision of the treatment;

(3) result in substantial irremediable physical pain or discomfort not outweighed by the benefit of the provision of the treatment; or

(4) be medically ineffective in prolonging the patient's life.

(e-1) If during a previous admission to a facility the [~~a patient's~~] attending physician and the ethics or medical committee [~~review process under Subsection (b) have~~] determined that life-sustaining treatment is inappropriate, a subsequent committee review is not required if [~~and~~] the patient is readmitted to the same facility for the same condition within six months from the date of the previous decision, provided that the [~~reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's~~] attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition [~~either has not improved or~~] has deteriorated since the previous review [~~process~~] was conducted.

(g) On motion [~~At the request~~] of the patient or surrogate [~~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 the patient or surrogate may find a physician or health care facility that will honor the patient's or surrogate's health care or treatment decision [~~directive will be found~~] if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142, an assisted living facility licensed under Chapter 247, or a similar organization that is beyond the scope of the services or resources of the facility, [~~or~~] agency, or organization. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142 or services provided by an assisted

living facility licensed under Chapter 247.

SECTION 8. Subsections (a) and (b), Section 166.052, Health and Safety Code, are amended to read as follows:

(a) In cases in which the attending physician disagrees with and refuses to comply with a health care [~~honor an advance directive~~] or treatment decision requesting the provision of life-sustaining treatment, the statement required by Section 166.046(b)(1)(D) [~~166.046(b)(2)(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 of the Texas Health and Safety Code.

When an attending physician disagrees with and refuses to comply with a [~~an advance directive or other~~] request for life-sustaining treatment because of the physician's medical 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.

As the patient or the patient's decision-maker, you [~~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.

The committee will appoint a patient liaison to assist you through this process. You are entitled to attend the meeting, address the committee, and be accompanied by up to five persons, or more persons at the committee's discretion, to support you, subject to the facility's reasonable written attendance policy to facilitate information sharing and discussion of the patient's medical status and treatment requirements and preserve the order and decorum of the meeting. On written request, you are also entitled to receive:

(1) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received during the preceding 30 calendar days in the facility, whichever is shorter, together with any reasonably available diagnostic results and reports; and

(2) not later than the fifth calendar day following the request or at another time specified by mutual agreement, a free copy of the remainder of the medical record, if any, related to the current admission to the facility.

As the patient or the patient's decision-maker, you are free to seek a second opinion at the patient's or your expense from other medical professionals regarding the patient's medical status and treatment requirements and communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting.

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,

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 [~~Texas~~] Health Services [~~Care Information Council~~]. 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 and treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, until the patient [~~he or she~~] can be transferred to a willing provider for up to 21 calendar [~~10~~] days from the time you were given the committee's written decision that life-sustaining treatment is not medically appropriate.

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 21-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 [~~will be found~~] if the extension is granted.

*"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 [~~artificial~~] 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 disagrees with and refuses to comply with a health care [~~an advance directive~~] or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(1)(D) [~~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 of the Texas Health and Safety Code.

When an attending physician disagrees with and refuses to comply with a [~~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.

As the patient or the patient's decision-maker, you [~~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 will be appointed a patient liaison familiar with end-of-life issues and hospice care options to assist you throughout this process. A representative of the ethics or medical

committee will also conduct an advisory consultation with you.

On written request you are entitled to receive:

(1) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with any reasonably available diagnostic results and reports; and

(2) not later than the fifth calendar day following the date of the request or at another time specified by mutual agreement, a free copy of the remainder of the medical record, if any, related to the current admission to the facility.

As the patient or the patient's decision-maker, you are free to seek a second opinion at the patient's or your expense from other medical professionals regarding the patient's medical status and treatment requests and communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting.

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 disagrees with and 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 accept the patient [~~withdraw or withhold the life-sustaining treatment~~].

2. You are being given a list of health care providers, 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 [~~Texas~~] Health Services [~~Care Information Council~~]. 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 [~~artificial~~] 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 9. 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 21-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 21-day period; or

(C) during extension of the 21-day period, if any.

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

(d) The department 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 10. Subsections (a) and (c), Section 166.082, Health and Safety Code, are amended to read as follows:

(a) A competent adult [~~person~~] may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by the board.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B requesting that all treatment, other than treatment necessary for keeping the person comfortable, be discontinued or withheld, the physician 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 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 11. Subsection (d), Section 166.152, Health and Safety Code, is amended to read as follows:

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's health care or treatment decision [~~advance directive~~].

SECTION 12. Not later than March 1, 2014, 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 13. The change in law made 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, 2014. A review, consultation, disagreement, or other action relating to a health care or treatment decision made before April 1,

2014, 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. This Act takes effect September 1, 2013.

* * * * *