

By: Frank

H.B. No. 3414

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 adding Subdivision (16) to read as follows:

(16) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

SECTION 2. Sections 166.045(c) and (d), Health and Safety Code, are amended to read as follows:

(c) If an attending physician refuses to comply with a directive or treatment decision for a reason permitted by Section 166.046(a-1) and not prohibited by Section 166.0455 and 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 directive or treatment decision.

(d) 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 person's appropriate licensing board if the person has complied with the procedures and limitations outlined in Sections 166.0455 and [Section] 166.046.

SECTION 3. Subchapter B, Chapter 166, Health and Safety Code, is amended by adding Section 166.0455 to read as follows:

Sec. 166.0455. LIMITATION ON REFUSAL TO EFFECTUATE CERTAIN ADVANCE DIRECTIVES OR TREATMENT DECISIONS. A physician or other health care professional, a health care facility, or an ethics or medical committee shall not override or refuse to honor and comply with a patient's advance directive or a health care or treatment decision made by or on behalf of a patient that directs the provision of life-sustaining treatment and shall not consider life-sustaining treatment to be inappropriate treatment under Section 166.046 based on:

(1) the lesser value the physician or professional, facility, or committee places on sustaining the life of an elderly, disabled, or terminally ill patient compared to the value of sustaining the life of a patient who is younger, not disabled, or not terminally ill; or

(2) a disagreement between the physician or professional, facility, or committee and the patient, or the person authorized to make a treatment decision for the patient under Section 166.039, over the greater weight the patient or person places on sustaining the patient's life than the risk of disability.

SECTION 4. Section 166.046, Health and Safety Code, is amended by amending Subsections (a) and (g) and adding Subsections

(a-1) and (c-1) to read as follows:

(a) If an attending physician refuses to honor or comply with a patient's advance directive or a health care or treatment decision made by or on behalf of a patient for a reason permitted by Subsection (a-1) and not prohibited by Section 166.0455, 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 person may not coerce or attempt to coerce a physician not to comply with a patient's advance directive or a health care or treatment decision made by or on behalf of a patient by threatening or implementing adverse employment decisions or professional discipline.

(a-1) The ethics or medical committee reviewing the physician's refusal under Subsection (a) shall not consider life-sustaining treatment inappropriate unless, based on reasonable medical judgment, the life-sustaining treatment requested by or on behalf of the patient is:

(1) futile because the treatment is physiologically ineffective in achieving the specific intended benefit to the patient as intended by or on behalf of the patient; or

(2) medically inappropriate because providing the treatment to the patient would clearly create a substantially greater risk of causing or hastening the death of the patient than would withholding or withdrawing the treatment.

(c-1) The ethics or medical committee shall not approve withdrawing or withholding life-sustaining treatment if the ethics

1 or medical committee determines during the review described by
2 Subsection (a) that the physician refused to honor a patient's
3 advance directive or a health care or treatment decision made by or
4 on behalf of the patient for a reason prohibited by Section
5 166.0455.

6 (g) At the request of the patient or the person responsible
7 for the health care decisions of the patient, the appropriate
8 ~~[district or county]~~ court shall extend the time period provided
9 under Subsection (e) ~~[only]~~ if the court finds, by a preponderance
10 of the evidence, that there is a reasonable expectation that a
11 physician or health care facility that will honor the patient's
12 directive will be found if the time extension is granted.

13 SECTION 5. Subchapter B, Chapter 166, Health and Safety
14 Code, is amended by adding Section 166.0465 to read as follows:

15 Sec. 166.0465. COURT PROCEEDINGS; APPEAL; FILING FEE AND
16 COURT COSTS. (a) A patient, the person responsible for the
17 patient's health care decisions, or the person who has made the
18 decision regarding the advance directive or treatment decision may
19 file a motion for injunctive relief in any county court at law,
20 court having probate jurisdiction, or district court, including a
21 family district court, based on:

22 (1) a request for extension of time to effect a patient
23 transfer for relief under Section 166.046(g); or

24 (2) an allegation that a physician or other health
25 care professional, health care facility, or ethics or medical
26 committee is violating or threatening to violate this chapter.

27 (b) The person filing a motion under Subsection (a) shall

1 immediately serve a copy of the motion on the defendant.

2 (c) The court shall promptly set a time for a hearing on a
3 motion filed under Subsection (a) and shall keep a record of all
4 testimony and other oral proceedings in the action. The court shall
5 rule on the motion and issue written findings of fact and
6 conclusions of law not later than the fifth business day after the
7 date the motion is filed with the court.

8 (d) The time for the hearing and the date by which the court
9 must rule on the motion under Subsection (c) may be extended, for
10 good cause shown, by the court.

11 (e) Any party may appeal the decision of the court under
12 Subsection (c) to the court of appeals having jurisdiction over
13 civil matters in the county in which the motion was filed by filing
14 a notice of appeal with the clerk of the court that ruled on the
15 motion not later than the first business day after the date the
16 decision of the court was issued.

17 (f) On receipt of a notice of appeal under Subsection (e),
18 the clerk of the court that ruled on the motion shall deliver a copy
19 of the notice of appeal and record on appeal to the clerk of the
20 court of appeals. On receipt of the notice and record, the clerk of
21 the court of appeals shall place the appeal on the docket of the
22 court, and the court of appeals shall promptly issue an expedited
23 briefing schedule and set a time for a hearing.

24 (g) The court of appeals shall rule on an appeal under
25 Subsection (f) not later than the fifth business day after the date
26 the notice of appeal is filed with the court that ruled on the
27 motion.

1 (h) The times for the filing of briefs, the hearing, and the
2 date by which the court of appeals must rule on the appeal under
3 Subsection (g) may be extended, for good cause shown, by the court
4 of appeals.

5 (i) Any party may file a petition for review of the decision
6 of the court of appeals under Subsection (g) with the clerk of the
7 supreme court not later than the third business day after the date
8 the decision of the court of appeals was issued. Other parties may
9 file responses not later than the third business day after the date
10 the petition for review was filed. The supreme court shall grant,
11 deny, refuse, or dismiss the petition, without regard to whether a
12 reply to any response has been filed, not later than the third
13 business day after the date the response was due. If the supreme
14 court grants the petition for review, the court shall exercise the
15 court's sound discretion in determining how expeditiously to hear
16 and decide the case.

17 (j) If a motion is filed under Subsection (a) and the
18 dispute concerns whether life-sustaining treatment should be
19 provided to the patient, life-sustaining treatment must be provided
20 through midnight of the day by which a notice of appeal must be
21 filed unless the court directs that the life-sustaining treatment
22 be provided for a longer period. If a notice of appeal under
23 Subsection (e) is filed, life-sustaining treatment must be provided
24 through midnight of the day by which a petition for review to the
25 supreme court must be filed, unless the court of appeals directs
26 that the life-sustaining treatment be provided for a longer period.
27 If a petition for review to the supreme court is filed under

1 Subsection (i), life-sustaining treatment must be provided through
2 midnight of the day on which the supreme court denies, refuses, or
3 dismisses the petition or issues a ruling on the merits, unless the
4 supreme court directs that the life-sustaining treatment be
5 provided for a longer period.

6 (k) A filing fee or court cost may not be assessed for any
7 proceeding in a trial or appellate court under this section.

8 SECTION 6. Section 166.051, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
11 This subchapter does not impair or supersede any legal right or
12 responsibility a person may have to effect the withholding or
13 withdrawal of life-sustaining treatment in a lawful manner,
14 provided that if an attending physician or health care facility is
15 unwilling to honor and comply with a patient's advance directive or
16 a treatment decision to provide life-sustaining treatment for a
17 reason permitted by Section 166.046(a-1) and not prohibited by
18 Section 166.0455, life-sustaining treatment is required to be
19 provided the patient, but only until a reasonable opportunity has
20 been afforded for transfer of the patient to another physician or
21 health care facility willing to comply with the advance directive
22 or treatment decision.

23 SECTION 7. Sections 166.052(a) and (b), Health and Safety
24 Code, are amended to read as follows:

25 (a) In cases in which the attending physician refuses to
26 honor an advance directive or treatment decision requesting the
27 provision of life-sustaining treatment, the statement required by

Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~] shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life-Sustaining Treatment That You Wish To Continue

You have been given this information because you have requested life-sustaining treatment,* which the attending physician believes is not 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 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 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 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 48 hours, if possible.

A physician or other health care professional, a health care facility, or an ethics or medical committee may not deny a patient life-sustaining treatment based on:

1. the lesser value the physician or professional,

1 facility, or committee places on sustaining the life of an elderly,
2 disabled, or terminally ill patient compared to the value of
3 sustaining the life of a patient who is younger, not disabled, or
4 not terminally ill; or

5 2. a disagreement between the physician or professional,
6 facility, or committee and the patient, or the person authorized to
7 make a treatment decision for the patient under Section 166.039,
8 over the greater weight the patient or person places on sustaining
9 the patient's life than the risk of disability.

10 Life-sustaining treatment may be denied if the treatment is:

11 1. futile because the treatment is physiologically
12 ineffective in achieving the specific intended benefit to the
13 patient as intended by or on behalf of the patient; or

14 2. medically inappropriate because providing the treatment
15 to the patient would clearly create a substantially greater risk of
16 causing or hastening the death of the patient than would
17 withholding or withdrawing it.

18 You are entitled to receive a written explanation of the
19 decision reached during the review process.

20 If after this review process both the attending physician and
21 the ethics or medical committee conclude that life-sustaining
22 treatment is inappropriate and yet you continue to request such
23 treatment, then the following procedure will occur:

24 1. The physician, with the help of the health care facility,
25 will assist you in trying to find a physician and facility willing
26 to provide the requested treatment.

27 2. You are being given a list of health care providers and

1 referral groups that have volunteered their readiness to consider
2 accepting transfer, or to assist in locating a provider willing to
3 accept transfer, maintained by the Texas Health Care Information
4 Council. You may wish to contact providers or referral groups on
5 the list or others of your choice to get help in arranging a
6 transfer.

7 3. The patient will continue to be given life-sustaining
8 treatment until he or she can be transferred to a willing provider
9 for up to 10 days from the time you were given the committee's
10 written decision that life-sustaining treatment is not
11 appropriate.

12 4. If a transfer can be arranged, the patient will be
13 responsible for the costs of the transfer.

14 5. If a provider cannot be found willing to give the
15 requested treatment within 10 days, life-sustaining treatment may
16 be withdrawn unless a court of law has ruled otherwise ~~[granted an~~
17 ~~extension]~~.

18 6. You may ask the ~~[appropriate district or county]~~ court to
19 extend the 10-day period if the court finds that there is a
20 reasonable expectation that a physician or health care facility
21 willing to provide life-sustaining treatment will be found if the
22 extension is granted.

23 7. The law gives you the right to seek a court order to
24 require a physician or other health care professional, health care
25 facility, or ethics or medical committee to comply with your rights
26 under the Texas Advance Directives Act if the physician or
27 professional, facility, or committee is violating or threatening to

1 violate a provision of that Act. You may wish to talk to legal
2 counsel for further information about your right to seek a court
3 order.

4 *"Life-sustaining treatment" means treatment that, based on
5 reasonable medical judgment, sustains the life of a patient and
6 without which the patient will die. The term includes both
7 life-sustaining medications and artificial life support, such as
8 mechanical breathing machines, kidney dialysis treatment, and
9 artificial nutrition and hydration. The term does not include the
10 administration of pain management medication or the performance of
11 a medical procedure considered to be necessary to provide comfort
12 care, or any other medical care provided to alleviate a patient's
13 pain.

14 (b) In cases in which the attending physician refuses to
15 comply with an advance directive or treatment decision requesting
16 the withholding or withdrawal of life-sustaining treatment, the
17 statement required by Section 166.046(b)(3)(A) shall be in
18 substantially the following form:

19 When There Is A Disagreement About Medical Treatment: The
20 Physician Recommends Life-Sustaining Treatment That You Wish To
21 Stop

22 You have been given this information because you have
23 requested the withdrawal or withholding of life-sustaining
24 treatment* and the attending physician refuses to comply with that
25 request. The information is being provided to help you understand
26 state law, your rights, and the resources available to you in such
27 circumstances. It outlines the process for resolving disagreements

1 about treatment among patients, families, and physicians. It is
2 based upon Section 166.046 of the Texas Advance Directives Act,
3 codified in Chapter 166, ~~[of the Texas]~~ Health and Safety Code.

4 When an attending physician refuses to comply with an advance
5 directive or other request for withdrawal or withholding of
6 life-sustaining treatment for any reason, the case will be reviewed
7 by an ethics or medical committee. Life-sustaining treatment will
8 be provided through the review.

9 You will receive notification of this review at least 48
10 hours before a meeting of the committee related to your case. You
11 are entitled to attend the meeting. With your agreement, the
12 meeting may be held sooner than 48 hours, if possible.

13 You are entitled to receive a written explanation of the
14 decision reached during the review process.

15 If you or the attending physician do not agree with the
16 decision reached during the review process, and the attending
17 physician still refuses to comply with your request to withhold or
18 withdraw life-sustaining treatment, then the following procedure
19 will occur:

20 1. The physician, with the help of the health care facility,
21 will assist you in trying to find a physician and facility willing
22 to withdraw or withhold the life-sustaining treatment.

23 2. You are being given a list of health care providers and
24 referral groups that have volunteered their readiness to consider
25 accepting transfer, or to assist in locating a provider willing to
26 accept transfer, maintained by the Texas Health Care Information
27 Council. You may wish to contact providers or referral groups on

the list or others of your choice to get help in arranging a transfer.

3. The law gives you a right to seek a court order to require a physician or other health care professional, health care facility, or ethics or medical committee to comply with your rights under the Texas Advance Directives Act if the physician, facility, or committee is violating or threatening to violate a provision of that Act. You may wish to talk to legal counsel for further information about your right to seek a court order.

"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 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 8. Section 166.158(c), Health and Safety Code, is amended to read as follows:

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures and limitations established under Sections 166.045, 166.0455, and

1 166.046 apply if the agent's directive concerns providing,
2 withholding, or withdrawing life-sustaining treatment.

3 SECTION 9. Section 166.166, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT
6 AFFECTED. This subchapter does not limit or impair any legal right
7 or responsibility that any person, including a physician or health
8 or residential care provider, may have to make or implement health
9 care decisions on behalf of a person, provided that if an attending
10 physician or health care facility is unwilling to honor and comply
11 with a patient's advance directive or a treatment decision to
12 provide life-sustaining treatment for a reason permitted by Section
13 166.046(a-1) and not prohibited by Section 166.0455,
14 life-sustaining treatment is required to be provided the patient,
15 but only until a reasonable opportunity has been afforded for
16 transfer of the patient to another physician or health care
17 facility willing to comply with the advance directive or treatment
18 decision.

19 SECTION 10. Not later than December 1, 2015, the Supreme
20 Court of Texas shall issue the rules and prescribe the forms
21 necessary for the process established by Section 166.0465, Health
22 and Safety Code, as added by this Act. The rules shall prescribe
23 the method of service of the application under Section 166.0465,
24 Health and Safety Code, and may require filing and service of
25 notices, petitions, and briefs electronically to the extent the
26 Supreme Court of Texas considers appropriate.

27 SECTION 11. The changes in law made by this Act apply only

1 to a health care or treatment decision made on or after the
2 effective date of this Act.

3 SECTION 12. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2015.