

## **BILL ANALYSIS**

C.S.H.B. 3074  
By: Springer  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Artificial nutrition and hydration can be beneficial for patients who are unable to consume food or water and can prolong life for months or even years. Interested parties, while acknowledging that artificial nutrition and hydration does not cure any terminal or irreversible illness, claim that it can have a positive impact on a patient's health under the right circumstances. These parties assert that the current Texas advance directives law lacks clarity given the complexity of end-of-life care and that its most glaring flaw is allowing food, water, and pain medication to be withdrawn with no medical standard for their withdrawal. C.S.H.B. 3074 seeks to provide clarity to state law relating to end-of-life care.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3074 amends the Health and Safety Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to include in the provision authorizing a competent adult executing a written directive to designate in the directive a person to make a treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication the authorization for the designated person to also make a health care decision. The bill establishes that the statutory requirement that a patient who is requesting, or for whom a person responsible for the health care decisions of the patient is requesting, life-sustaining treatment that the attending physician and an ethics or medical committee have determined to be medically inappropriate be given available life-sustaining treatment pending the patient's transfer to a physician willing to comply with the patient's directive 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 bill specifies that, along with the attending physician and the health care facility, any other physician responsible for the patient's care also is not obligated to provide life-sustaining treatment after a specified period has elapsed but establishes an exception to require the provision of 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 desire not to receive artificially administered nutrition

or hydration.

C.S.H.B. 3074 entitles a patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision that a physician refuses to honor to 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 the period of the patient's current admission to the facility or the preceding 30 calendar days and to receive a copy of all of the patient's reasonably available diagnostic results and reports related to that portion of the medical record. The bill specifies that the time after which a physician or the health care facility is not obligated to provide life-sustaining treatment is after the 10th day after both the written decision reached during the review process and the patient's medical record are provided to the patient or the person responsible for the health care decisions of the patient. The bill updates the language required to be included in a written directive to physicians and family or surrogates and in the statement explaining the patient's right to transfer when the attending physician refuses to honor an advance directive or health care or treatment decision requesting the provision of life-sustaining treatment.

C.S.H.B. 3074 requires the executive commissioner of the Health and Human Services Commission, not later than March 1, 2016, to adopt all rules necessary to implement the bill's provisions. The bill applies to a review, consultation, disagreement, or other action relating to a health care or treatment decision made on or after April 1, 2016.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3074 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Sections 166.002(2) and (10), Health and Safety Code, are amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 166.003, Health and Safety Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 166.032(c), Health and Safety Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 166.033, Health and Safety Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 166.046(e), Health and Safety Code, is amended to read as follows:	SECTION 5. Sections 166.046(b) and (e), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, are amended to read as follows:

No equivalent provision.

(b) 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) 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 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

(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

(4) is entitled to:

(A) attend the meeting; ~~and~~

(B) receive a written explanation of the decision reached during the review process;

(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

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

(e) If the 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 [~~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 necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred

(e) If the 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 [~~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 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 10th day after the written decision required under Subsection (b) is provided to the patient or the 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, suffering, or discomfort not outweighed by the benefit of the provision of the treatment;
- (4) be medically ineffective; or
- (5) be contrary to the patient's clearly stated desire not to receive artificially administered nutrition or hydration.

SECTION 6. 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)(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 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

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 10th day after both the written decision and the patient's medical record required under Subsection (b) are [~~is~~] provided to the patient or the 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) 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.

SECTION 6. Sections 166.052(a) and (b), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, 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)(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, ~~[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 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 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.

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 [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 unless, based on

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 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 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.

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 [he or she] can be transferred to a willing provider for up to 10 days from the time you were given both the committee's written decision

reasonable medical judgment, providing artificially administered nutrition and hydration would hasten the patient's death, seriously exacerbate other major medical problems, result in substantial irremediable physical pain, suffering, or discomfort not outweighed by the benefit of the treatment, be medically ineffective, or be contrary to the patient's clearly stated desires, until the patient [he or she] can be transferred to a willing provider for up to 10 days from the time you were given the committee's written decision that life-sustaining treatment is not 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 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 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 refuses to comply with an advance

that life-sustaining treatment is not appropriate and the patient's medical record. The patient will continue to be given after 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 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 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. 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 [~~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 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)(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 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 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.

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

directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 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

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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.

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 [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 7. Not later than March 1, 2016, the executive commissioner of the Health and Human Services Commission shall adopt all rules necessary to implement this Act.

SECTION 8. 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, 2016. A review, consultation, disagreement, or other action relating to a health care or treatment decision made before April 1, 2016, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2015.

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 [~~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 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.