

- SUBJECT:** Allowing one physician to certify patients as terminally ill
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 5 ayes — Berlanga, Hirschi, Maxey, McDonald, Rodriguez
0 nays
4 absent — Coleman, Delisi, Glaze, Janek
- SENATE VOTE:** To suspend the regular order on third reading, March 7 — 26-3 (Leedom, Patterson, Sibley)
- WITNESSES:** For — Randal T. Boston, Keystone Home Health Management, Inc; Marsha Jones, Texas Hospital Association; Greg Hooser, Texas Hospice Organization; Sara Speights, Texas Health Care Organization; Ann Heiligenstein, Texas Conference of Catholic Health Care Facilities
Against — None
- BACKGROUND:** The Natural Death Act (Chpt. 672 of the Health and Safety Code) allows a competent adult to execute a written directive in the presence of two witnesses declaring the adult's wish not to have life artificially prolonged under certain conditions. A directive can be revoked at any time.
- The statute provides a model format of a written directive that includes a provision that the directive would be carried out in circumstances in which the person has been diagnosed with an incurable or irreversible condition certified to be terminal by two physicians.
- Qualified patients can issue a directive by a nonwritten means of communication in the presence of an attending physician and two witnesses.
- A qualified patient is defined as a patient with a terminal condition that has been diagnosed and certified by the attending physician and one other physician.

DIGEST: SB 497 would amend the Natural Death Act to allow patients diagnosed as terminal by one physician instead of two physicians to issue or enact a verbal or nonverbal directive.

SUPPORTERS SAY: SB 497 would remove the two-physician requirements that have become barriers for many terminally ill persons having their wishes carried out due to the limited availability of doctors in rural areas and other circumstances. SB 497 is endorsed by a wide consortium of organizations and individuals whose practice includes caring for the sick and dying.

Requiring two doctors to certify a terminal condition is unnecessary in most cases and costly because the patient's condition is severe and indisputable — certifying a terminal condition is not the same as getting a second opinion on a condition for which there are alternative courses of treatment or diagnoses. Patients are forced to pay for a second physician's certification when a terminal condition is obvious.

SB 497 would not prevent a person from obtaining certification from two physicians or from requiring two physicians to certify a terminal condition in their written directive. SB 497 would allow persons who trust their physician's judgment or whose conditions are indisputable to have their wishes of natural death carried out.

Rural patients with terminal illnesses deserve to have their wishes honored as would their urban counterparts and not be subject to artificial or heroic means of life support simply because there is only one physician in the community. Medicaid patients — which includes most nursing home residents — also are discriminated against by the two-doctor rules because Medicaid will not pay for a second doctor's certification. Many nursing home residents spend their last moments alive being transported to a hospital for medical intervention or for another doctor's certification instead of being allowed to die as they wish in familiar surroundings.

OPPONENTS SAY: SB 497 would be removing a important safeguard that could result in increased physician liability and in patients being incorrectly certified as terminally ill and not receiving appropriate medical care. It is not all that unusual for patients who have been told they have a small chance of

recovering from an illness or condition to recuperate sufficiently to continue to live a meaningful life.

The problems experienced by rural residents and nursing home residents relates to the supply and maldistribution of physicians in Texas and to the Medicaid program, *not* to the safeguards in the Natural Death Act.

NOTES:

A related bill, SB 1161 by Rosson, allowing out-of-hospital do not resuscitate orders, is also on the May 22 General State Calendar.