SUBJECT: Revising the Advance Directives Act for medical treatment

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Laubenberg, Truitt, Dawson, Taylor, Zedler

0 nays

4 absent — Capelo, Coleman, McReynolds, Naishtat

SENATE VOTE: On final passage, May 8 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 3009:)*
For — Robert Fine, M.D., Texas Medical Association; Greg Hooser, Texas Advance Directive Coalition

Against — None

BACKGROUND: In 1999, the 76th Legislature enacted SB 1260 by Moncrief, the Advance Directives Act (Health and Safety Code, ch. 166) to streamline and harmonize three different laws relating to a person's ability to make health-care decisions even when comatose or otherwise unable to decide. SB 1260 consolidated former chapters governing a directive to physicians (more commonly known as a living will), durable power of attorney for health care, and out-of-hospital do-not-resuscitate (DNR) orders.

Since enactment of SB 1260, a coalition of health-care practitioners, patients and their families, medical ethicists, lawyers, educators, and state agency staff has identified five issues in the Advance Directives Act as needing further clarity or supplementation:

- whether the act applies to all people, including pediatric patients;
- whether the standard physician's DNR order, often issued in hospitals and other health-care facilities, may be honored outside of the hospital setting, such as in nursing or hospice inpatient facilities;
- a need for additional information about the decision-making and ethics committee review process when differing opinions exist about the

appropriateness of continued medical treatment, when disagreement involves continuing, withholding, or withdrawing treatment;

- providing a means by which health facilities and referral groups may assist patients or their surrogates who seek transfer care when the treating physician or facility has refused to honor a patient's advance directive or a surrogate's treatment decisions; and
- a need for additional liability protections for circumstances in which a patient judged to be in a terminal or irreversible condition suffers cardiac arrest and the physician believes that he or she will die within moments to hours.

DIGEST:

CSSB 1320 would specify that the Advance Directives Act applies to health-care treatment decisions made on behalf of a minor. The act would be subject to applicable federal law and regulations relating to child abuse and neglect, insofar as the state received federal funds.

CSSB 1320 would relieve from civil or criminal liability a doctor, nurse, or person directed by a physician to withhold or withdraw cardiopulmonary resuscitation (CPR) from a patient who, in reasonable medical judgment, had a terminal or irreversible condition and whose death would occur within minutes to hours regardless of whether CPR were given. This would not limit the authority of a health-care provider to honor an otherwise valid patient's directive or DNR order.

The bill would specify procedures to follow when an attending physician refused to honor a patient's advance directive or a health-care or treatment decision made by or on behalf of a patient. A patient (or surrogate), at the time that the directive was refused, would have to be given a copy of a registry list of health-care providers and referral groups that had volunteered to consider accepting transfer or to assist in locating a provider willing to accept transfer under the circumstances. The Texas Health Care Information Council would have to maintain the registry and post it online. If the patient or surrogate had requested life-sustaining treatment that the attending physician and the review process affirmed was inappropriate, the patient's life would have to be sustained until a transfer in care was complete.

If, during a previous admission to a facility, a patient's attending physician and the review process determined that life-sustaining treatment was

inappropriate and the patient was readmitted to the same facility within six months, the same process of documentation, review, and life-sustaining treatment while awaiting transfer would not have to be followed, so long as the attending physician and a consulting physician on the facility's ethics committee documented that the patient's condition either was unimproved or had deteriorated since the last admission.

CSSB 1320 would prescribe a written statement explaining a patient's right to transfer care and the process that would have to be followed when a physician refused to give life-sustaining treatment that the patient or surrogate wished to continue. It would prescribe a similarly detailed written statement explaining a patient's right to transfer care when a physician refused to withdraw life-sustaining treatment that the patient or surrogate wished to stop.

A licensed nurse or health-care provider in an out-of-hospital setting could honor a physician's DNR order. When responding to a call for assistance, emergency medical personnel could honor only a properly executed out-of-hospital DNR order or a prescribed DNR identification device.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

NOTES:

The identical companion bill, HB 3009 by Capelo, passed the House on the Local, Consent, and Resolutions Calendar on May 16 and was referred to the Senate Administration Committee on May 20.