

**SUBJECT:** Providing artificially administered nutrition and hydration

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 8 ayes — Cook, Giddings, Geren, Harless, Huberty, Kuempel, Smithee, Sylvester Turner

0 nays

4 absent — Craddick, Farney, Farrar, Oliveira

**WITNESSES:** For — Kathryn Freeman, Christian Life Commission; Dennis Borel, Coalition of Texans with Disabilities; Jacqueline Harvey, Euthanasia Prevention Coalition International; David Zientek, Seton Healthcare Family, Texas Catholic Conference, Texas Medical Association and Texas Hospital Association; Kyleen Wright, Texans for Life; Joe Pojman, Texas Alliance for Life; Stephen Casey, Texas Center for Defense of Life; Jennifer Allmon, The Texas Catholic Conference of Bishops; Joe Kral; Beverly Nuckols; (*Registered, but did not testify:* Vicki Perkins, CHRISTUS Health; Beverly Roberts, Concerned Women for America; Gregg Knaupe, Seton Healthcare Family; Ruth Allwein, Leah Brown, and Erin Groff, Texas Alliance for Life; Sara Austin and Darren Whitehurst, Texas Medical Association)

Against — Cecilia Wood, CWA of Texas; Paul “Scott” Miller, National Center for Life and Liberty, Inc.; Jennifer Popik, National Right to Life; Philip Sevilla, Texas Leadership Institute for Public Advocacy; Elizabeth Graham, Emily Horne, John Seago, Texas Right to Life; and 10 individuals; (*Registered, but did not testify:* Beverly Roberts and Mary Smith, Concerned Women for America; Cindy Asmussen, Concerned Women for America of Texas; Jason Vaughn, Pro-Life Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; Emily Kebodeaux, Texas Right to Life; and 41 individuals.)

On — Jeremy Newman, Texas Home School Coalition; Read King; (*Registered, but did not testify:* Allison Hughes, Department of State

Health Services)

**BACKGROUND:** The Advance Directives Act in Health and Safety Code, ch. 166 consolidated former chapters of code 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 orders. This chapter defines “artificial nutrition and hydration” to mean the provision of nutrients or fluids by a tube inserted into a patient’s vein, under the skin subcutaneously, or in the stomach (gastrointestinal tract).

Health and Safety Code, sec. 166.046 requires an ethics or medical committee to review a physician’s refusal to honor a patient’s advance directive or a health care or treatment decision made by or on behalf of a patient. A patient’s attending physician cannot be a member of that committee. Statute requires a patient to be given life-sustaining treatment during the review. Section 166.046 also requires a physician to make a reasonable effort to transfer a patient to a physician who is willing to comply with the patient’s directive if the attending physician, the patient, or the person responsible for the patient’s health care decisions does not agree with the decision reached during the review process.

**DIGEST:** CSHB 3074 would remove references in Health and Safety Code, ch. 166 to “artificial” nutrition and hydration and would replace them with references to “artificially administered” nutrition and hydration. The bill also would specify that “treatment decisions” were “health care or treatment decisions.”

The patient or the person responsible for the health care decisions of the individual who had made the decision regarding the directive or treatment decision would be entitled 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 time period of the patient’s current admission to the facility; or
- the preceding 30 calendar days.

The patient or the person responsible for the patient's decisions also would receive a copy of all the patient's reasonably available diagnostic results and reports.

If the patient or the person responsible for the patient's health care decisions requested life-sustaining treatment that the attending physician had decided and the ethics or medical committee had affirmed to be medically inappropriate, the patient would be given available life-sustaining treatment pending transfer to another facility. Life-sustaining treatment would include life-sustaining medications and artificial life support such as artificially administered nutrition and hydration. During this period, the withdrawal or withholding of pain management medication, medical procedures necessary to provide comfort, or any other health care provided to alleviate a patient's pain would not be authorized.

The bill would specify that the attending physician, any other physician responsible for the care of the patient, and the health care facility were not obligated to provide life-sustaining treatment except for artificially administered nutrition and hydration after the 10th day after both the written decision and the patient's medical record were provided to the patient or the person responsible for the patient. A physician or health care facility could decide not to provide artificially administered nutrition and hydration if, in their reasonable medical judgment, providing it would:

- hasten the patient's death;
- be medically contraindicated such that the provision of the treatment seriously exacerbated life-threatening medical problems not outweighed by the benefit of providing the treatment;
- result in substantial irremediable physical pain not outweighed by the benefit of providing 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.

The bill would change the form that current law requires a patient or the

person responsible for the patient's health care decisions to receive when an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient. The bill would specify that the form read, "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." The bill would require the form to use the term "medically inappropriate" rather than "inappropriate" throughout the document. The bill would require the form to specify that the list of providers a patient would receive regarding transfer of the patient from one facility to another would include licensed physicians and health care facilities.

The bill would specify that the patient would continue to be given life-sustaining treatment until the patient could be transferred to a willing provider for up to 10 days from the time they were given both the committee's written decision that life-sustaining treatment was not appropriate and the patient's medical record.

The bill would require, after the 10 days, that a patient continue to be given treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing this nutrition and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbated life-threatening medical problems not outweighed by the benefit of the provision of the treatment, resulted in substantial irremediable physical pain not outweighed by the benefit of the treatment, was medically ineffective in prolonging life, or would be contrary to the patient's or surrogate's clearly documented desires.

The executive commissioner of the Health and Human Services Committee would adopt all rules necessary to implement the bill by March 1, 2016. The bill would take effect September 1, 2015 and would apply to a review, consultation, disagreement, or other action relating to a health care or treatment decision made on or after April 1, 2016.

**SUPPORTERS  
SAY:**

CSHB 3074 represents a negotiated compromise to correct a flaw in Texas law by requiring artificial nutrition and hydration to be provided to a patient in the natural process of death. The bill would include clear criteria that would have to be met to address situations when provision of food and water could be actually harmful to the patient. No federal laws prohibit withholding of nutrition and hydration when medically appropriate, and current law does not provide clear criteria for when and how a decision to remove artificially administered nutrition and hydration may occur.

The bill adds additional patient protections to statute by ensuring that the time period for transfer of a patient from one physician or facility to another would not start until the patient or surrogate received a copy of the relevant portion of the patient's medical records.

Medical professionals need discretion when trying to heal patients. There are cases where food and water exacerbate a patient's condition and hasten a patient's death. The substitute would address issues with the definition of "medically appropriate" by more narrowly defining the exceptions under the bill and by providing a narrower definition for the term "medically contraindicated." Doctors have six or more years of training and the expertise and experience to make these decisions, and the bill would allow doctors to use their discretion in these cases only when necessary.

The bill specifically does not intend to be an omnibus advance directives bill but would focus specifically on artificially provided nutrition and hydration to address stakeholder concerns on this particular issue.

**OPPONENTS  
SAY:**

A hospital should not be able to remove food and water from a patient. By specifying certain circumstances under which hospitals could withhold nutrition and hydration from a patient, the bill would allow this inappropriate practice. In addition, the bill also would allow a physician to make decisions about the patient's care based on what was medically appropriate without defining what "medically appropriate" would mean.

One physician's opinion is different from another's and the bill may not provide enough guidance to protect a patient's wishes concerning end-of-life decisions.