

BILL ANALYSIS

Senate Research Center
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S.B. 28
By: Nelson
Health and Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law provides for advance directive forms, which can be misplaced during times of transfer between health care facilities. The law does not provide for a transferable physician orders form instructing health care providers regarding a patient's end-of-life care wishes that is placed in the patient's medical records and is transferred with the patient to another facility.

As proposed, S.B. 28 requires the Health and Human Services Commission to create an easily identifiable standardized physician orders form regarding the provision or withholding of life-sustaining and related treatment based on the patient's medical condition and wishes during times of transfer of the patient between facilities and between health care provider shifts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 (Section 166.203 and 166.220, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services (DSHS) and the Department of Aging and Disability Services (DADS), as successor agencies to TDH.]

SECTION 1. Amends the heading to Chapter 166, Health and Safety Code, to read as follows:

CHAPTER 166. ADVANCE DIRECTIVES;
TRANSFERABLE PHYSICIAN ORDERS

SECTION 2. Amends Section 166.001, Health and Safety Code, as follows:

Sec. 166.001. SHORT TITLE. Authorizes this chapter to be cited as the Advance Directives and Transferable Physician Orders Act.

SECTION 3. Amends Section 166.002, Health and Safety Code, by adding Subdivision (16), to define "transferable physician orders."

SECTION 4. Amends Sections 166.006 and 166.007, Health and Safety Code, as follows:

Sec. 166.006. New heading: EFFECT OF ADVANCE DIRECTIVE OR TRANSFERABLE PHYSICIAN ORDERS ON INSURANCE POLICY AND PREMIUMS. (a) Provides that the fact that a person has executed or issued an advance directive or is the subject of a transferable physician order does not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person or modify the terms of an existing life insurance policy.

(b) Provides that the fact that life-sustaining treatment is withheld or withdrawn from an insured patient under this chapter does not legally impair or invalidate that person's life insurance policy, notwithstanding the terms of any insurance policy, and may not be a factor for the purpose of determining, under the life

insurance policy, whether benefits are payable or the cause of death. Deletes the word "qualified" when referring to an insured patient.

(c) Provides that the fact that a person has executed or issued or failed to execute or issue an advance directive or is the subject of a transferable physician order is prohibited from being considered in any way in establishing insurance premiums.

Sec. 166.007. New heading: EXECUTION OF ADVANCE DIRECTIVE OR TRANSFERABLE PHYSICIAN ORDERS MAY NOT BE REQUIRED. Prohibits a physician, health facility, health care provider, insurer, or health care service plan from requiring a person to execute or issue an advance directive or to execute or have executed on the person's behalf transferable physician orders as a condition for obtaining insurance for health care services or receiving health care services.

SECTION 5. Amends Subchapter A, Chapter 166, Health and Safety Code, by adding Section 166.0075, as follows:

Sec. 166.0075. PERSON'S CHOICE. (a) Authorizes a person to elect to execute or have executed on the person's behalf under this chapter a directive, an out-of-hospital DNR order, a medical power of attorney, or a transferable physician orders form.

(b) Authorizes a person to elect to execute or have executed on the person's behalf transferable physician orders, as an alternative to or in addition to an advance directive, for the provision or withholding of life-sustaining and related treatment based on the person's medical condition and wishes. Makes the provisions of this chapter concerning advance directives not applicable to transferable physician orders or a transferable physician orders form unless specifically provided otherwise by this chapter.

SECTION 6. Amends Section 166.008, Health and Safety Code, as follows:

Sec. 166.008. New heading: CONFLICT BETWEEN ADVANCE DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS. Makes conforming changes.

SECTION 7. Amends Chapter 166, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. TRANSFERABLE PHYSICIAN ORDERS FOR LIFE-SUSTAINING AND RELATED TREATMENT

Sec. 166.201. DEFINITIONS. Defines "advanced practice nurse," "executive commissioner," "health care professional," "health care provider," "minor," and "transferable physician orders."

Sec. 166.202. TRANSFERABLE PHYSICIAN ORDERS. Authorizes a physician, advance practice nurse, or other health care professional to enter a patient's preferences and the physician orders for the provision or withholding of life-sustaining and related treatment on a transferable physician orders form that complies with this subchapter. Requires a transferable physician orders form to be executed by a physician, an advanced practice nurse, the patient, or an authorized representative of the patient to be valid. Provides that a transferable physician orders form is effective on execution.

Sec. 166.203. FORM OF TRANSFERABLE PHYSICIAN ORDERS. (a) Requires transferable physician orders to be contained in the standard written form specified by rule. Requires the Department of State Health Services (DSHS) and the Department of Aging and Disability Services (DADS) to develop the form.

(b) and (c) Sets forth the requirements and format of the standard form.

(d) Authorizes the executive commissioner of the Health and Human Services Commission (commissioner), on the recommendation of DSHS and DADS, or at

the commissioner's discretion, to modify by rule the standard form of the transferable physician orders to accomplish the purposes of this subchapter.

(e) Authorizes a photocopy or other complete facsimile of the original written transferable physician orders form executed under this subchapter to be used for any purpose for which the original form may be used under this subchapter.

Sec. 166.204. STATEMENT RELATING TO TRANSFERABLE PHYSICIAN ORDERS. (a) Sets forth the health care providers to which this section is applicable.

(b) Requires a health care provider to maintain written policies regarding the implementation of transferable physician orders. Requires that the policies include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with transferable physician orders.

(c) Requires the health care provider to provide written notice of the policies described by Subsection (b) to an individual, except as provided by Subsection (e), within certain time periods.

(d) Requires the health care provider to provide the required written notice to appropriate individuals to the same extent and in the same manner as notice of policies on the implementation of advance directives, as provided under Section 166.004(d) - (f), if, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section.

(e) Provides that this section does not apply to outpatient hospital services, including emergency services.

Sec. 166.205. DUTY OF CERTAIN HEALTH CARE PROVIDERS. (a) Requires a health care provider that is a facility, on admission of a patient to the facility, to make a good faith effort to determine whether the patient is the subject of transferable physician orders.

(b) Requires a health care provider that is a facility to offer each patient with a terminal or irreversible condition, and authorizes a health care provider to offer other patients, an opportunity to have a transferable physician orders form prepared on the patient's admission to the facility.

(c) Requires a health care provider that is a facility to place a patient's transferable physician orders form in a prominent location in the patient's medical records. Authorizes a health care provider to retain a copy of the transferable physician orders form in the records if the original document is transferred with the patient to another facility or is provided to the patient on discharge.

(d) Requires a health care professional at a health care provider that is a facility to review the transferable physician orders with the patient or an authorized representative of the patient when there is a substantial, permanent change in the patient's health status, the patient is transferred from one care setting to another, or the patient's treatment preferences change.

(e) Provides that a transferable physician orders form is fully transferable between all facilities licensed to provide health care services in this state.

(f) Requires a transferring health care provider that is a facility to send any original transferable physician orders form with the patient to a receiving facility or with the patient when the patient is discharged. Requires the receiving facility and the health care professional at the facility to honor the transferable physician orders as provided by this subchapter until the document becomes invalid.

Sec. 166.206. DUTY OF HEALTH CARE PROFESSIONAL RESPONDING TO CALL FOR ASSISTANCE IN OUT-OF-HOSPITAL SETTING. (a) Requires a health care professional to honor transferable physician orders, when responding to a call for assistance in an out-of-hospital setting, if the health care professional discovers an executed transferable physician orders form on arrival at the scene and complies with this section.

(b) Requires the responding health care professional to establish the identity of the person as the person who is the subject of the transferable physician orders.

(c) Requires the responding health care professional to determine that the transferable physician orders form appears to be valid in that the document includes certain specified conditions.

(d) Prohibits the transferable physician orders from being honored and requires initiation or continuation of life-sustaining treatment otherwise required by law or local emergency medical services protocols, if the conditions prescribed by Subsection (a) - (c) are not determined to apply by the responding health care professional at the scene.

(e) Requires the original transferable physician orders form, or a copy of the original form when the original form is not available, to accompany the person during transport.

(f) Requires that a record be made and maintained of the circumstances of each emergency medical services response in which a transferable physician orders form is encountered.

(g) Provides that transferable physician orders documented or evidenced in the manner prescribed by this subchapter are valid and requires such orders to be honored by a responding health care professional in an out-of-hospital setting unless a person identifies himself or herself as the person who is the subject of the transferable physician order, the person's attending physician, or an authorized representative of the person, and requests that cardiopulmonary resuscitation or other life-sustaining treatment be initiated or continued.

Sec. 166.207. COMPLIANCE WITH ORDERS BY CERTAIN HEALTH CARE PROVIDERS. Requires the facility to take all reasonable steps to notify the person or the person's authorized representative of the facility's policy and effect the transfer of the person to the person's home or to a facility where the provision of this subchapter can be carried out if the policies of a health care provider that is a facility preclude compliance with the transferable physician orders that apply to a person who is admitted to or is a resident of the facility.

Sec. 166.208. PATIENT DESIRE SUPERSEDES TRANSFERABLE PHYSICIAN ORDERS. Provides that the desire of a patient, including a patient who is a minor, supersedes the effect of transferable physician orders when the desire is communicated to a health care provider.

Sec. 166.209. TRANSFERABLE PHYSICIAN ORDERS FORM PREPARED FOR MINOR PATIENT. Authorizes the patient's parents or the patient's legal guardian to execute a transferable physician orders form on behalf of a patient who is a minor.

Sec. 166.210. DURATION OF TRANSFERABLE PHYSICIAN ORDERS FORM. Provides that a transferable physician orders form remains in effect until the document is replaced or voided as prescribed by Section 166.211 or the document otherwise becomes invalid.

Sec. 166.211. TRANSFERABLE PHYSICIAN ORDERS VOIDABLE. (a) Authorizes a patient who is the subject of transferable physician orders to void the transferable

physician orders form at any time without regard to the patient's mental state or competency.

(b) Provides that an action taken under this section takes effect only when the attending physician receives notice of the action. Requires the attending physician or the physician's designee to record in the patient's medical record the time, date, and place that the physician received the notice. Requires the attending physician or the physician's designee to enter the word "VOID" on the front and back of the copy of the transferable physician orders form, if any, in the patient's medical record, in addition to following the applicable instructions on the transferable physician orders form.

(c) Provides that a person is not required to honor the voiding of transferable physician orders under this section unless the person has actual knowledge of that action.

Sec. 166.212. EXECUTING ORDERS OR WITHHOLDING LIFE-SUSTAINING PROCEDURES IN GOOD FAITH. (a) Provides that a physician or advanced practice nurse who in good faith executes transferable physician orders with respect to a patient in accordance with this subchapter is not civilly or criminally liable for that action.

(b) Provides that a health care provider who in good faith causes or participates in withholding life-sustaining or related treatment from a patient in accordance with transferable physician orders executed under this subchapter is not civilly or criminally liable for that action, guilty of unprofessional conduct as a result of that action, in violation of any licensing or regulatory law or rules of this state as a result of that action, or subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Sec. 166.213. FAILURE TO EFFECT TRANSFERABLE PHYSICIAN ORDERS. (a) Provides that a health care provider who has no actual knowledge of transferable physician orders executed under this subchapter is not civilly or criminally liable for failing to act in accordance with the transferable physician orders.

(b) Provides that a health care provider is subject to review and disciplinary action by the appropriate licensing board for failing to act in accordance with a patient's transferable physician orders, except as provided by Subsection (e). Provides that this subsection does not limit remedies available under other laws of this state.

(c) Requires the physician to inform the patient or the patient's authorized representative if the attending physician refuses to execute a transferable physician orders form. Requires the physician to make a reasonable effort to transfer the person to another physician who is willing to execute a transferable physician orders form, if that person so directs.

(d) Requires that life-sustaining treatment be provided to the patient if an attending physician refuses to comply with transferable physician orders regarding life-sustaining treatment executed under this subchapter and does not wish to follow the procedure established under Section 166.214, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care provider that is a facility that is willing to comply with the transferable physician orders.

(e) Provides that a physician or other health care provider 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 outlined in Section 166.214.

Sec. 166.214. PROCEDURE IF NOT EFFECTING TRANSFERABLE PHYSICIAN ORDERS. (a) Requires an ethics or medical committee to review an attending

physician's refusal in the same manner and to the same extent as an attending physician's refusal to honor an advance directive is reviewed under Section 166.046, if an attending physician refuses to honor a patient's transferable physician orders regarding life-sustaining treatment. Prohibits the physician from being a member of that committee. Requires that the patient be given life-sustaining treatment during the review.

(b) Requires the patient or authorized representative, at the time of being informed of the committee review process, be provided a copy of the appropriate statement described by Section 166.219 and 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.

(c) Requires that a written explanation of the decision reached during the review process be included in the patient's medical record.

(d) Requires the physician to make a reasonable effort to transfer the patient to a physician who is willing to comply with the transferable physician orders, if the attending physician, patient, or patient's authorized representative does not agree with the decision reached during the review process under this section. Requires that the facility's personnel assist the physician in arranging the patient's transfer to another physician, an alternative care setting within that facility, or another facility, if the patient is a patient of a health care provider that is a facility.

(e) Requires that the patient be given available life-sustaining treatment pending transfer under Subsection (d), if the patient or patient's authorized representative is requesting life-sustaining treatment that the attending physician has decided and the review process has affirmed is inappropriate treatment. Provides that the patient is responsible for any costs incurred in transferring the patient to another facility. Provides that the physician and the facility are not obligated to provide life-sustaining treatment after the 10th day after the date the written decision required under the review process is provided to the patient or the patient's authorized representative unless ordered to do so under Subsection (h).

(f) Provides that if a patient's attending physician and the review process under this section have determined that life-sustaining treatment is inappropriate during a previous admission to a health care provider that is a facility, and the patient is readmitted to the same facility within six months from the date of that decision, the applicable procedures as described by Section 166.046(b) and Subsections (b) - (e) of this section need not be followed if the patient's attending physician and a consulting physician, who is a member of the ethics or medical committee of the facility, document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(g) Prohibits life-sustaining treatment under this section from being entered in the patient's medical record as medically unnecessary treatment until the period provided under Subsection (e) has expired.

(h) Requires the appropriate district or county court to extend the period provided under Subsection (e), at the request of the patient or the patient's authorized representative, only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or another health care provider that will honor the patient's transferable physician orders will be found if the time extension is granted.

(i) Prohibits this section from being construed to impose an obligation on a health care provider that is a facility, including a home and community support services agency licensed under Chapter 142 or similar organization, that is beyond the scope of the services or resources of the facility. Provides that this section does

not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

Sec. 166.215. HONORING TRANSFERABLE PHYSICIAN ORDERS DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. Provides that a person does not commit an offense under Section 22.08, Penal Code, by withholding life-sustaining or related treatment from a person in accordance with transferable physician orders executed under this subchapter.

Sec. 166.216. PREGNANT PATIENTS. Prohibits a person from withholding life-sustaining treatment under transferable physician orders executed under this subchapter from a patient known by the person to be pregnant.

Sec. 166.217. MERCY KILLING NOT CONDONED. Provides that this subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Sec. 166.218. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. Provides that this subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining or related treatment in a lawful manner, provided that if an attending physician or health care provider is unwilling to honor a patient's transferable physician orders to provide life-sustaining treatment, life-sustaining treatment is required to be provided to the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care provider willing to comply with the transferable physician orders.

Sec. 166.219. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (a) Requires the statement required by Section 166.214(b) (1) to be in substantially the form provided in Section 166.052(a), in cases in which the attending physician refuses to honor a patient's transferable physician orders requesting the provision of life sustaining treatment, except that the form may be revised as necessary to apply to transferable physician orders.

(b) Requires the statement required by Section 166.214(b) (1) to be in substantially the form provided in Section 166.052(b), in cases in which the attending physician refuses to comply with a patient's transferable physician orders requesting the withholding of life-sustaining treatment, except that the form may be revised as necessary to apply to transferable physician orders.

Sec. 166.220. RULES. Requires the commissioner to adopt rules necessary to implement and administer this subchapter.

SECTION 8. Amends Section 166.033, Health and Safety Code, as follows:

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. Sets forth the authorized form for a Directive to Physicians and Family or Surrogates. Updates the form to include that Texas law also provides for transferable physician orders.

SECTION 9. Amends Section 166.046(b), Health and Safety Code, to update references to the Texas Health Care Information Council to refer to the Texas Department of Health (TDH).

SECTION 10. Amends Sections 166.052(a) and (b), Health and Safety Code, as follows:

(a) Replaces reference to Section 166.046(b)(2)(A) with Section 166.046(b)(3)(A). Makes conforming changes. Updates references to Texas Health Care Information Council to refer to DSHS.

(b) Makes conforming changes.

SECTION 11. Amends Sections 166.053(a), (c), and (d), Health and Safety Code, as follows:

(a) Updates references to the Texas Health Care Information Council to refer to TDH. Makes conforming changes.

(c) Makes conforming changes.

(d) Updates references to the Texas Health Care Information Council to refer to DSHS.

SECTION 12. Amends Subchapter B, Chapter 157, Occupations Code, by adding Section 157.0575, as follows:

Sec. 157.0575. DELEGATION FOR EXECUTING TRANSFERABLE PHYSICIAN ORDERS. Authorizes a physician to delegate to an advanced practice nurse the execution of transferable physician orders under Subchapter E, Chapter 166, Health and Safety Code. Authorizes the advanced practice nurse, pursuant to the physician's order and in accordance with applicable facility policies or medical staff bylaws, to execute on behalf of a patient transferable physician orders in accordance with Subchapter E, Chapter 166, Health and Safety Code.

SECTION 13. Amends the heading to Section 142.0145, Health and Safety Code, to read as follows:

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

SECTION 14. Amends Section 142.0145(a), Health and Safety Code, to make a conforming change.

SECTION 15. Amends the heading to Section 242.0663, Health and Safety Code, to read as follows:

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

SECTION 16. Amends Section 242.0663(a), Health and Safety Code, to make a conforming change.

SECTION 17. Amends the heading to Section 247.0459, Health and Safety Code, to read as follows:

Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

SECTION 18. Amends Section 247.0459(a), Health and Safety Code, to make conforming a change.

SECTION 19. Amends the heading to Section 248.0545, Health and Safety Code, to read as follows:

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES AND TRANSFERABLE PHYSICIAN ORDERS.

SECTION 20. Amends Section 248.0545(a), Health and Safety Code, to make a conforming change.

SECTION 21. Amends Section 81.1011, Government Code, as follows:

Sec. 81.1011. EXCEPTION FOR CERTAIN LEGAL ASSISTANCE. (a) Updates references to Texas Department on Aging to refer to DADS. Makes conforming changes.

(b)(2) Updates references to the Texas Department on Aging to refer to the executive commissioner of the Health and Human Services Commission (HHSC).

(4) Updates references to the Texas Department on Aging to refer to DADS.

(c) Updates references to the Texas Department on Aging to refer to the executive commissioner of HHSC. Updates references to the department to refer to DADS.

SECTION 22. (a) Requires DSHS and DADS to develop the transferable physician orders form required by Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, not later than January 1, 2008.

(b) Requires the executive commissioner of HHSC to adopt the rules necessary to implement Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, not later than May 1, 2008.

(c) Requires DSHS And DADS to consider the Physician Orders for Life-Sustaining Treatment (POLST) form distributed by the Oregon Health and Science University's Center for Ethics in Health Care, in developing the transferable physician orders form required by Subchapter E, Chapter 166, Health and Safety Code, as added by this Act.

SECTION 23. (a) Effective date: September 1, 2007.

(b) Effective date for Sections 166.202, 166.204, 166.205, 166.206, and 166.207, Health and Safety Code: May 1, 2008.