

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 439
By: Deuell et al.
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, if a physician refuses to honor an advance directive or treatment decision, the physician's decision must be reviewed by an ethics or medical committee, during which time life-sustaining treatment is required to be provided to the patient. Some hospitals are withdrawing life-sustaining treatment from patients before they can be transferred to an alternative facility, often resulting in their death.

C.S.S.B. 439 requires life-sustaining treatment to continue to be provided to the patient until the patient's transfer to another facility is complete and the facility from which the patient is being transferred is required to provide a list of facilities, maintained by the Department of State Health Services, that have volunteered their readiness to accept transfers. The bill ensures the rights of patients and their families in deciding to accept or reject life-sustaining treatment, seeks to improve the doctor-patient relationship, allows doctors to refuse to continue a treatment that conflicts with their personal code of ethics, strengthens the power and legitimacy of advanced directives, and promotes the public's trust in hospitals.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 11 of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 11 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 166.002, Health and Safety Code, by amending Subdivision (6) and adding Subdivisions (16) and (17), as follows:

(6) Redefines "ethics or medical committee."

(16) Defines "preterminal condition."

(17) Defines "surrogate."

SECTION 2. Amends Section 166.031(2), Health and Safety Code, to redefine "qualified patient."

SECTION 3. Amends Section 166.039(e), Health and Safety Code, as follows:

(e) Requires a treatment decision made under Subsection (b) to be concurred with by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient, if the patient does not have a legal guardian or agent under a medical power of attorney and a person listed in Subsection (b) is not available.

SECTION 4. Amends Section 166.045(c), Health and Safety Code, as follows:

(c) Requires that if an attending physician disagrees with a health care or treatment decision of a surrogate made on behalf of an incompetent patient who has been diagnosed

with a terminal or preterminal condition that has been certified in writing by the attending physician and does not wish to follow the procedure established under Section 166.046, rather than refuses to comply with a directive or treatment decision, the patient be provided with life-sustaining treatment of at least the same level, but only until reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the health care, rather than directive, or treatment decision.

SECTION 5. Amends Section 166.046, Health and Safety Code, as follows:

Sec. 166.046. New heading: PROCEDURE IF PHYSICIAN DISAGREES WITH HEALTH CARE OR TREATMENT DECISION. (a) Requires an attending physician, if the attending physician disagrees with a health care or treatment decision of a surrogate made on behalf of an incompetent patient who has been diagnosed with a terminal or preterminal condition that has been certified in writing by the attending physician, to request a consultation with an ethics or medical committee under Subsection (a-1). Deletes existing text relating to the instance when an attending physician refuse to honor a patient's advance directive or a health care or treatment decision. Requires the patient to be given life-sustaining treatment during the process described by this section, rather than review. Prohibits the process established under this section from being invoked, if artificial nutrition and hydration are the only life-sustaining treatment being provided to a patient with a terminal or preterminal condition, unless reasonable medical evidence indicates the provision of artificial nutrition and hydration may hasten the patient's death or seriously exacerbate other major medical problems.

(a-1) Requires the ethics or medical committee, if an attending physician requests a consultation with an ethics or medical committee, to appoint a patient liaison familiar with end-of-life issues and hospice care options to assist the patient's surrogate throughout the process described by this section, and appoint one or more representatives of the ethics or medical committee to conduct an advisory ethics consultation with the surrogate, which is required to be documented in the patient's medical record.

(a-2) Authorizes the attending physician, if a disagreement over a health care or treatment decision persists following an advisory ethics consultation described in Subsection (a-1)(2), to request a meeting with the ethics or medical committee and requires the attending physician to advise the surrogate that the attending physician will initiate the review process and present medical facts at the meeting described in Subsection (b). Prohibits the attending physician from participating as a member of the ethics or medical committee in the case being evaluated.

(b) Requires the surrogate, on receipt of a request for a meeting of the meeting of the ethics or medical committee as described in Subsection (a-2), not later than the seventh calendar day before the date of the meeting requested under Subsection (a-2), unless the time period is waived by mutual agreement, to be offered a written description of the ethics or medical committee review process. Authorizes any other policies and procedures related to this section adopted by the health care facility to be offered to the surrogate. Entitles the surrogate, if requested in writing by the surrogate, to receive, not later than 72 hours after the request, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with requested diagnostic results and reports reasonably requested by the surrogate; and a free copy of the remainder of the patient's medical record, if any, related to the current admission to the facility, not later than the fifth calendar day after the date of the request. Deletes existing text requiring the patient or the person responsible for the health care decisions of the individuals who has made the decision regarding the directive or treatment decision to be informed of the committee review process not less than 48 hours before the meeting to discuss certain information.

Requires the surrogate to be provided information regarding the surrogate being entitled to receive the continued assistance of a patient liaison, and authorized to seek a second opinion from other medical professional regarding the patient's medical status and treatment requirements and to communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting. Requires that the surrogate be provided a copy of the appropriate statement set forth in Section 166.052; and a copy of the registry list of health care providers, 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 that is posted on the website maintained by the Department of State Health Services (DSHS), rather than Texas Health Care Information Council (council), under Section 166.053.

(b-1) Entitles the surrogate to attend and participate in the meeting, excluding the committee's deliberations, and be accompanied at the meeting by one or more persons for support, subject to the hospital's reasonable written attendance policy and the ability of the ethics or medical committee to accommodate the persons attending. Makes a conforming change.

(c) Requires the written explanation required by Subsection (b-1)(3), rather than (b)(2)(B), to be included in the patient's medical record.

(d) Requires the attending physician, if the physician or the surrogate, rather than the physician, the patient, or the person responsible for the health care decisions of the individual, does not agree with the decision reached during the review process, rather than review process under Subsection (b), to make a reasonable effort to transfer the patient to a physician who is willing to comply with the surrogate's health care or treatment decision, rather than directive. Requires the facility's personnel to assist the physician in arranging the patients transfer. Deletes existing text as it relates to the condition for requiring the facility's personnel to assist the physician in arranging the patients transfer.

(e) Requires that if the surrogate is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient be given available life-sustaining treatment of at least the same level as was provided at the time the meeting with the ethics or medical committee was held under Subsection (a-2) pending transfer under Subsection (d). Requires the patient to receive certain treatment to enhance pain relief and minimize suffering, unless it would produce a certain outcome. Provides that the attending physician and any other physician responsible for the care of the patient are not obligated to provide life-sustaining treatment, except for the provision of artificial nutrition and hydration, unless providing the artificial nutrition and hydration would hasten death or seriously exacerbate other major medical conditions, after the 21st calendar, rather than 10th, day after the written decision required under Subsection (b) is provided to the surrogate, unless ordered to do so under Subsection (g).

(e-1) Provides that this subsection addresses incidents when a patient is readmitted to another facility in the same health care system within a certain time from the date of the decision reached during the review process conducted upon the previous admission. Makes conforming changes.

(f) Prohibits life-sustaining treatment under this section from being entered into the patient's medical record as medically unnecessary treatment until the time period under Subsection (e) and Section 166.0465, if applicable, has expired.

(g) Requires the appropriate district or county court to extend the time period under Subsection (e) at the request of the patient or the surrogate, only if the court in a proceeding conducted under Section 166.045 finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care

facility that will honor the surrogate's health care or treatment decision, rather than patient's directive, will be found if the time extension is granted.

(h) Makes no changes to this subsection.

SECTION 6. Amends Subchapter B, Chapter 166, Health and Safety Code, by adding Section 166.0465, as follows:

Sec. 166.0465. COURT ORDER FOR LIFE-SUSTAINING TREATMENT; APPEAL; FILING FEE AND COURT COSTS. (a) Authorizes a patient's surrogate to submit a motion for extension of time to effect a patient transfer for relief under Section 166.046(g) in any county court at law, court having probate jurisdiction, or district court, including a family district court and immediately serve a copy on the health care facility.

(b) Requires the court to set a time for a hearing on a motion filed under Subsection (a) and to keep a record of all testimony and other oral proceedings in the action. Requires the court to rule on the motion and issue written findings on fact and conclusions of law not later than the fifth business day after the date the motion is filed with the court. Authorizes the time for the hearing and the date by which the court is required to rule on the motion to be extended by stipulation of the parties, with the approval of the court.

(c) Authorizes any party to appeal the decision of the court under Subsection (b) to the court of appeals having jurisdiction over civil matters in the county in which the motion was filed by filing a notice of appealing with the clerk of the court that ruled on the motion not later than the first business day after the day on which the decision of the court was issued.

(d) Requires the clerk of the court that ruled on the motion, on receipt of a notice of appeal under Subsection (c), to deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. Requires the clerk of the court of appeals, on receipt of the notice and record, to place the appeal on the docket of the court, and the court of appeals to promptly issue an expedited briefing schedule and set a time for a hearing.

(e) Requires the court of appeals to rule on an appeal under Subsection (d) not later than the fifth business day after the date the notice of appeal is filed with the court that ruled on the motion. Authorizes the times for the filing of briefs, the hearings, and the date by which the court of appeals is required to rule on the appeal, to be extended by stipulation of the parties, with the approval of the court of appeals.

(f) Authorizes any party to file a petition for review of the decision of the court of appeals with the clerk of the supreme court not later than the third business day after the day on which the decision of the court of appeals was issued. Authorizes other parties to file responses not later than the third business day after the day on which the petition for review was filed. Requires the supreme court to grant the petition, deny it, refuse it, or dismiss it for want of jurisdiction, whether or not a reply to any response has been filed, not later than the third business day after the day on which the response was due. Requires the supreme court, if it grants the petition for review, to exercise its sound discretion in determining how expeditiously to hear and decide the case.

(g) Requires life-sustaining treatment, if a motion is filed under Subsection (a), to be provided through midnight of the day by which a notice of appeal is required to be filed unless the court directs that it be provided for a longer period. Requires life-sustaining treatment, if a notice of appeal under Subsection (c) is filed, to be provided through midnight of the day by which a petition for review to the supreme court is required to be filed, unless the court of appeals directs that it be provided for a longer period. Requires life-sustaining treatment, if a petition for review to the supreme court is filed under Subsection (f), to be provided

through midnight of the day on which the supreme court denies, refuses, or dismisses the petition or issues a ruling on the merits, unless the supreme court directs that it be provided for a longer period.

(h) Prohibits a filing fee or court cost from being assessed for any proceeding in a trial or appellate court under this section.

SECTION 7. Amends Sections 166.052(a) and (b), Health and Safety Code, as follows:

(a) Makes conforming changes to the statement required by Section 166.046(b)(5), rather than Section 166.046(b)(2)(A), for cases when the attending physician disagrees with a treatment decision requesting the provision of life-sustaining treatment. Requires the statement to include that the patient's decision-maker will be provided with notification of the review by the ethics or medical committee at least seven calendar days, rather than 48 hours, if possible. Requires the statement to inform the decision-maker that the meeting may be held sooner than seven calendar days if agreed by the decision-maker. Deletes existing text entitling the person which receives the statement to attend the review. Requires the statement to inform the decision-maker that a patient liaison will be appointed by the committee to assist the decision-maker in the process. Requires the statement to include that the decision-maker is entitled to attend the meeting, address the committee, and be accompanied by one or more persons for support, subject to the hospital's reasonable written attendance policy and the ability of the committee to accommodate the persons attending. Requires the statement to include that the decision-maker is entitled, on written request, to certain information. Requires the statement to include a reference to information maintained by DSHS, rather than the council, regarding health care providers, 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. Requires the statement to establish the treatment to be received by the patient and certain other information relating to life-sustaining treatment being withdrawn, and requests for an extension to continue life-sustaining treatment beyond 21 calendar days, rather than 10 days.

(b) Makes conforming changes to the statement required by Section 166.046(b)(5), rather than Section 166.046(b)(3)(A), for cases when the attending physician disagrees with a health care or treatment decision requesting the withholding or withdrawal of life-sustaining treatment. Requires the statement to include that the patient's decision-maker will be provided with notification of the review by the ethics or medical committee at least seven calendar days, rather than 48 hours, if possible. Requires the statement to inform the decision-maker that the meeting may be held sooner than seven calendar days if the decision-maker agrees and that the decision maker is entitled to attend. Requires the statement to inform the decision-maker that a patient liaison familiar with end-of-life issues and hospice care options to assist through the process, and that a representative of the ethics or medical committee will also conduct an advisory consultation with the decision-maker. Requires the statement to include that the decision-maker is entitled, on written request, to certain information. Requires the statement to include a reference to information maintained by DSHS, rather than the council, regarding health care providers, 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.

SECTION 8. Amends Subchapter B, Chapter 166, Health and Safety Code, by adding Section 166.054, as follows:

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESS OF DATA. (a) Requires that, on submission of a health care facility's application to renew its license, a facility in which one or more meetings of an ethics or medical committee is held file a report (report) with the department that contains aggregate information regarding the number of cases considered by an ethics or medical committee under Section 166.046(a-2) and the disposition of those cases by the facility.

(b) Authorizes aggregate data submitted to the department under this section to only include certain information.

(c) Prohibits the report required by this section from containing any data specific to an individual patient.

SECTION 9. Amends Sections 166.082(a) and (c), Health and Safety Code, as follows:

(a) Amends this section to reference a competent adult, rather than competent person.

(c) Provides that this subsection includes a directive issued in accordance with Subchapter B, requesting that all treatment, other than treatment necessary for keeping the person comfortable, be discontinued or withheld.

SECTION 10. Amends Section 166.152(d), Health and Safety Code, to include health care decision, rather than advance directive.

SECTION 11. (a) Requires the Texas Supreme Court, not later than November 1, 2007, to issue the rules and prescribe the forms necessary for the process established in section 166.0465, Health and Safety Code, as added by this Act. Requires the rules to prescribe the method of service of the application under Section 166.0465 and authorizes the rules to require filing and service of notices, petitions, and briefs electronically to the extent the Supreme Court considers appropriate.

(b) Requires the executive commissioner of the Health and Human Services Commission, not later than March 1, 2008, to adopt the rules necessary to implement the changes in law made by this Act to Chapter 166, Health and Safety Code.

SECTION 12. Effective date: September 1, 2007.