

## **BILL ANALYSIS**

Senate Research Center  
84R25291 SCL-F

H.B. 3074  
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Health & Human Services  
5/18/2015  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Artificial nutrition and hydration can be beneficial for patients who are unable to consume food or water and can prolong life for months or even years. While artificial nutrition and hydration does not cure any terminal or irreversible illness, it can have a positive impact on a patient's health under the right circumstances. The current Texas advance directives law lacks clarity given the complexity of end-of-life care and its most glaring flaw is allowing food, water, and pain medication to be withdrawn with no medical standard for their withdrawal.

H.B. 3074 amends the Texas Advance Directives Act to require that artificial nutrition and hydration be provided to a patient unless it: hastens the patient's death; exacerbates life-threatening medical problems not outweighed by the medical benefit; causes substantial irremediable pain that cannot be relieved and is not outweighed by the medical benefit; is medically ineffective in prolonging life; or is in conflict with the patient's documented wishes.

H.B. 3074 requires the continued provision of life-sustaining treatment for up to 10 days from the time the patient is given both the hospital ethics committee's written decision that the continuance of treatment is not appropriate and the patient's medical record.

H.B. 3074 amends current law relating to the provision of artificially administered nutrition and hydration and life-sustaining treatment.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of Aging and Disability Services, as the successor agency to TDH.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 166.002(2) and (10), Health and Safety Code, to define "artificially administered nutrition and hydration," rather than "artificial nutrition and hydration," and to redefine "life-sustaining treatment."

SECTION 2. Amends Section 166.003, Health and Safety Code, as follows:

Sec. 166.003. WITNESSES. Provides that, in any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

- (1) each witness must be a competent adult; and
- (2) at least one of the witnesses must be a person who is not a person designated by the declarant to make a health care or treatment decision. Makes no further change to this subdivision.

SECTION 3. Amends Section 166.032(c), Health and Safety Code, to authorize a declarant to include in a directive directions other than those provided by Section 166.033, Health and Safety Code, and to designate in a directive a person to make a health care or treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.

SECTION 4. Amends Section 166.033, Health and Safety Code, as follows:

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. Authorizes a written directive to be in a certain form as set forth.

SECTION 5. Amends Sections 166.046(b) and (e), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(b) Provides that the patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:

(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;

(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;

(3) at the time of being so informed, shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052 (Statements Explaining Patient's Right to Transfer), Health and Safety Code; and

(B) 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 Texas Department of Health under Section 166.053 (Registry to Assist Transfers); and

(4) is entitled to:

(A) and (B) Makes nonsubstantive changes to these subdivisions;

(C) 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:

(i) the period of the patient's current admission to the facility; or

(ii) the preceding 30 calendar days; and

(D) receive a copy of all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (C).

(e) Requires the patient to be given available life-sustaining treatment pending transfer under Subsection (d) if the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee, rather than review process, has affirmed is medically inappropriate treatment. Provides that this subsection does not authorize withholding or withdrawing pain management medication, medical procedures necessary to provide comfort, or any other health care provided to alleviate a patient's pain. Provides that the patient is responsible for any costs incurred in transferring the patient to

another facility. Provides that the attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after both the written decision and the patient's medical record required under Subsection (b) are provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

- (1) hasten the patient's death;
- (2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment;
- (3) result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment;
- (4) be medically ineffective in prolonging life; or
- (5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

SECTION 6. Amends Sections 166.052(a) and (b), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require that the statement required by Section 166.046(b)(3)(A) (relating to the patient or the person responsible for the health care decisions of the individual providing a copy of the appropriate statement set forth in Section 166.052), Health and Safety Code, in cases in which the attending physician refuses to honor an advance directive or health care or treatment decision requesting the provision of life-sustaining treatment, be in substantially a certain form with certain language as set forth.

SECTION 7. Requires the executive commissioner of the Health and Human Services Commission to adopt all rules necessary to implement this Act not later than March 1, 2016.

SECTION 8. Provides that the change in law made by this Act applies only to a review, consultation, disagreement, or other action relating to a health care or treatment decision made on or after April 1, 2016. Makes application of this Act prospective to April 1, 2016.

SECTION 9. Effective date: September 1, 2015.