

BILL ANALYSIS

Senate Research Center

S.B. 11
By: Perry
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A do-not-resuscitate (DNR) order is a medical directive that instructs medical professionals not to perform certain cardiopulmonary resuscitation (CPR) and other life-sustaining procedures if the patient suffers cardiac or respiratory arrest.

Current Texas law is silent on requirements for the authorization, execution, or revocation of a DNR order in a hospital setting. Chapter 166 of the Health and Safety Code only addresses out-of-hospital DNR orders. Doctors can (and have) unilaterally written DNR orders for patients without discussion, let alone consent, from either the patient or a surrogate decision-maker.

S.B. 11 expressly applies to a DNR order used in a health care facility, including a hospital or an assisted living facility, or in hospice settings, including hospice services provided by a home and community support services agency and expressly does not apply to an out-of-hospital DNR order as defined under the Advance Directives Act.

S.B. 11 contains a number of provisions where a DNR order issued for a patient in certain settings is valid and requires notification of family or surrogates. (Original Author's / Sponsor's Statement of Intent)

S.B. 11 amends current law relating to general procedures and requirements for certain do-not-resuscitate orders and creates a criminal offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 166, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. DEFINITION. Defines "DNR order."

Sec. 166.202. APPLICABILITY OF SUBCHAPTER. (a) Provides that this subchapter applies to a do-not-resuscitate (DNR) order issued in a health care facility or hospital.

(b) Provides that this subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081 (Definitions).

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) Provides that a DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order:

(1) is issued in compliance with certain treatment decisions or advance directives; or

(2) is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician:

(A) the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation (CPR); and

(B) the DNR order is medically appropriate.

(b) Provides that the DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable.

(c) Requires the physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital, before placing in a patient's medical record a DNR order issued under Subsection (a)(2), to:

(1) inform the patient of the order's issuance; or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance a certain person.

(d) Provides that, to the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter (Advance Directives), the treatment decision made in compliance with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS.

(a) Requires the physician, physician assistant, or nurse who has actual knowledge of the order, if an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, to disclose the order to the individual, provided the individual meets certain criteria.

(b) Provides that failure to comply with Subsection (a) does not affect the validity of a DNR order issued under this subchapter.

(c) Provides that any person, including a health care facility or hospital, who makes a good faith effort to comply with Subsection (a) or Section 166.203(c) and contemporaneously records the person's effort to comply with Subsection (a) or Section 166.203(c) in the patient's medical record is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) or Section 166.203(c).

(d) Authorizes a physician, physician assistant, or nurse to satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b) (relating to authorizing the attending physician and one certain person, if the patient does not have a legal guardian or an agent under a medical power of attorney, to make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment). Provides that the physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(e) Requires the facility or hospital, on admission to a health care facility or hospital, to provide to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY. (a) Requires a physician providing direct care to a patient for whom a DNR order is issued to revoke the patient's DNR order if the patient or, as applicable, the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(1) effectively revokes an advance directive, in accordance with Section 166.042 (Revocation of Directive), for which a DNR order is issued under Section 166.203(a); or

(2) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Section 166.203(a).

(b) Requires a person providing direct care to a patient under the supervision of a physician to notify the physician of the request to revoke a DNR order under Subsection (a).

(c) Authorizes a patient's attending physician to at any time revoke a DNR order issued under Section 166.203(a)(2).

(d) Provides that, except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) Requires the physician, facility, or hospital, if an attending physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of CPR, to inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of CPR.

(b) Requires the physician, facility, or hospital, if, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the attending physician, health care facility, or hospital remain in disagreement, to make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of CPR.

(c) Prohibits the procedures required by this section from being construed to control or supersede Section 166.203(a).

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY RESUSCITATION. Provides that a physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes CPR to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER. Provides that a physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or

subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

Sec. 166.209. ENFORCEMENT. (a) Provides that a physician, physician assistant, nurse, or other person commits an offense if the person intentionally conceals, cancels, effectuates, or falsifies another person's DNR order or if the person intentionally conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter. Provides that an offense under this subsection is a Class A misdemeanor. Provides that this subsection does not preclude prosecution for any other applicable offense.

(b) Provides that a physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally failing to effectuate a DNR order in violation of this subchapter or issuing a DNR order in violation of this subchapter.

SECTION 2. Requires the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 3. Makes application of Subchapter E, Chapter 166, Health and Safety Code, as added by this Act, prospective.

SECTION 4. Effective date: April 1, 2018.