

BILL ANALYSIS

Senate Research Center
86R7244 SCL-F

S.B. 2089
By: Hughes
Health & Human Services
3/30/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law allows patients to express their wishes about medical treatment in a legal document called an advance directive. Under the Advance Directives Act, patients put in writing whether they want life-sustaining treatment if they become unable to make medical decisions for themselves. Many patients are surprised to learn that the same Act that gives them the right to express their desire for life-sustaining treatment also gives a health care provider the right to withdraw that treatment, overriding their written directives and the objections of their family.

Under Chapter 166.046, Health and Safety Code, if a doctor or hospital decides not to honor a patient's advance directive, the doctor can withdraw life-sustaining treatment, such as a ventilator, after 10 days' notice to the family. Families only have this 10-day window to transfer their loved one to a different facility before basic life-sustaining measures are discontinued. If the family cannot find another facility in 10 days (which is often the case), the doctor can remove the treatment and the patient dies.

S.B. 2089 requires that when a physician refuses to honor a patient or surrogate's medical directives, the physician is required to continue to provide treatment until a facility that will provide the treatment is located and the patient is transferred. S.B. 2089 does not require a physician to provide increasingly aggressive treatment options to the patient. Current law and S.B. 2089 only require a physician to provide treatment that in reasonable medical judgment sustains the life of the patient and without which the patient will die.

The protections in S.B. 2089 do not apply to patients or families who refuse to accept reasonable transfers offered by a hospital or physician. Current law gives doctors immunity from criminal and civil liability if they follow the procedure in statute, and S.B. 2089 does not in any way change or remove that immunity.

As proposed, S.B. 2089 amends current law relating to advance directives or health care or treatment decisions made by or on behalf of patients.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Authorizes this Act to be cited as the Respecting Texas Patients' Right to Life Act of 2019.

SECTION 2. Provides that the purpose of this Act is to protect the right of patients and their families to decide whether and under what circumstances to choose or reject life-sustaining treatment. Provides that this Act amends the applicable provisions of the Advance Directives Act (Chapter 166, Health and Safety Code) to ensure that, when an attending physician is unwilling to respect a patient's advance directive or a patient's or family's decision to choose the treatment necessary to prevent the patient's death, life-sustaining medical treatment will be provided until the patient can be transferred to a health care provider willing to honor the directive or treatment decision.

SECTION 3. Amends Section 166.045(c), Health and Safety Code, as follows:

(c) Requires life-sustaining treatment to be provided to a patient if an attending physician refuses to comply with a directive or treatment decision until the patient is transferred to another physician or health care facility willing to comply with the directive or treatment decision to provide life-sustaining treatment to the patient, rather than requiring life-sustaining treatment to be provided to a patient if an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046 (Procedure if Not Effectuating a Directive or Treatment Decision), but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

SECTION 4. Amends Sections 166.046(a), (b), (d), (e), (e-1), and (f), Health and Safety Code, as follows:

(a) 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, other than a directive or decision to provide artificial nutrition and hydration to the patient, rather than 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. Requires that the patient be given life-sustaining treatment during the review and until the patient is transferred to another physician or health care facility willing to comply with the directive or treatment decision to provide life-sustaining treatment to the patient, rather than requiring that the patient be given life-sustaining treatment during the review.

(b) Makes nonsubstantive changes and 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) and (2) makes no changes to these subdivisions;

(3) deletes existing text requiring that a copy of the appropriate statement set forth in Section 166.052 (Statements Explaining Patient's Right to Transfer) be provided to 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 at the time they are so informed;

(4) is entitled to:

(A) makes no changes to this paragraph;

(B) receive a written explanation of the recommendations made during the review process, rather than receive a written explanation of the decision reached during the review process;

(C) and (D) makes no changes to these paragraphs.

(d) Requires the attending physician, if the physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the recommendations made during the review process under Subsection (b), rather than does not agree with the decision reached during the review process under Subsection (b), to make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive.

(e) Requires that, if the patient or the person responsible for the health care decisions of the patient is requesting life-sustaining treatment that the attending physician and the ethics or medical committee consider medically inappropriate treatment, rather than 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 pending transfer under Subsection (d). Requires the provision of artificially administered nutrition and hydration unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would lead to certain outcomes. Deletes existing text providing that the patient is responsible for any costs incurred in transferring the patient to another facility. Deletes existing text providing that certain physicians, and the health care facility, are not obligated to provide life-sustaining treatment after a certain period unless certain conditions are met.

(e-1) Makes a conforming change.

(f) Prohibits entering life-sustaining treatment under this section in the patient's medical record as medically unnecessary treatment, rather than prohibiting entering life-sustaining treatment under this section in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

SECTION 5. Amends Section 166.051, Health and Safety Code, as follows:

Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. Provides that this subchapter (Directive to Physicians) does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided to the patient in accordance with this chapter (Advance Directives), rather than is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

SECTION 6. Amends Section 25.0021(b), Government Code, to delete existing text providing that a statutory probate court, as that term is defined in Section 22.007(c) (relating to defining "statutory probate court"), Estates Code, has the jurisdiction provided by law for a county court to hear and determine actions, cases, matters, or proceedings instituted under Section 166.046.

SECTION 7. Repealer: Section 166.046(g) (relating to requiring a certain district or county court, at the request of certain parties, to extend the time period for providing life-sustaining treatment only if the court makes certain findings), Health and Safety Code.

Repealer: Section 166.052 (Statements Explaining Patient's Right to Transfer), Health and Safety Code.

SECTION 8. Effective date: upon passage or September 1, 2019.