

SUBJECT: Conflict of interest and discrimination policy for advance directive review

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Geren, Harless, Huberty,
Kuempel, Smithee, Sylvester Turner

0 nays

2 absent — Farney, Oliveira

WITNESSES: For — Dennis Borel, Coalition of Texans with Disabilities; David Zientek, Seton Healthcare Family, Texas Catholic Conference, Texas Hospital Association; Kyleen Wright, Texans for Life Committee; Beverly Nuckols and Joe Pojman, Texas Alliance for Life, Inc.; Jeffery Patterson and Jennifer Allmon, the Texas Catholic Conference of Bishops; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Gabriela Saenz, CHRISTUS Health; Jacqueline Rodriguez, Texans for Life Committee; Ruth Allwein, Leah Brown, and Erin Groff, Texas Alliance for Life; Sara Austin, Texas Medical Association; Carlos Higgins, Texas Silver Haired Legislature; Christian Duran; Debra McDaniels; Terry Williams)

Against — Emily Kebodeaux, John Seago, and Andrew Schlafly, Texas Right to Life; Richard DeOtte; Michael Woelfel; (*Registered, but did not testify*: Bob Kafka, Not Dead Yet of Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; Elizabeth Graham, Texas Right to Life; and six individuals)

On — (*Registered, but did not testify*: Allison Hughes, Department of State Health Services)

BACKGROUND: The Advance Directives Act in Health and Safety Code, ch. 166 consolidated former chapters of code governing a directive to physicians (more commonly known as a living will), durable power of attorney for health care, and out-of-hospital do-not-resuscitate (DNR) orders.

Health and Safety Code, sec. 166.046 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. A patient's attending physician cannot be a member of that committee. Statute requires a patient to be given life-sustaining treatment during the review.

DIGEST: HB 2351 would require each health care facility that provided review by an ethics or medical committee under the Advance Directives Act to adopt and implement:

- a policy to prevent financial and health care professional conflicts of interest that could arise during an advance directive review; and
- a policy to prohibit consideration of a patient's permanent physical or mental disability during an advance directive review, unless the disability was relevant in determining whether a medical or surgical intervention was medically appropriate.

HB 2351 would require a health care facility to adopt these policies by April 1, 2016. The adopted policies would apply to an ethics or medical committee review conducted on or after April 1, 2016.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 2351 would ensure that an ethics or medical committee under the Advance Directives Act did not make quality-of-life decisions based on a patient's disability or for monetary reasons. The bill would be a reasonable step toward increasing transparency in hospital facility ethics committees and would recognize that decisions regarding treatment should be made through the lens of the inherent sanctity of life.

The bill's provision allowing a health facility to take a person's disability into consideration if it was relevant to determining whether an intervention was medically appropriate was developed in consultation with advocacy organizations for people with disabilities. This provision is

necessary to ensure that people with disabilities would receive proper medical care if their disability was relevant to such a determination.

The bill would ensure that ethics or medical committees developed a policy to prevent financial conflicts of interest and discrimination against a person with a disability, and it would do this without overreaching and without creating a burdensome mandate for health facilities that could impair a physician's ability to properly practice medicine. The bill's provisions are limited in scope to ensure that rural hospitals could comply with the provisions. The bill also would reflect the fact that ethics committees make decisions about whether a physician was properly practicing to a standard of care, not whether a patient will live or die.

**OPPONENTS
SAY:**

HB 2351 might not reform the Advance Directives Act in a meaningful way because it would not specify what the hospital facilities' policies on conflict of interest and discrimination would have to include past vague guidelines. The bill also would include a potential loophole by allowing health facilities to consider a patient's permanent physical or mental disability during a review if the disability was relevant in determining whether an intervention was medically appropriate.

**OTHER
OPPONENTS
SAY:**

A hospital should not have the final authority over whether a patient would receive a ventilator, food, water, or dialysis. The bill should go further to fix the issue of ethics committees having substantial power over a patient's health decisions.