

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 414  
By: Moncrief  
Health & Human Services  
3-20-97  
Committee Report (Substituted)

### **DIGEST**

Currently, under Texas Law, advance directives or out-of-hospital orders relating to the withholding or withdrawing of life-sustaining procedures in the event of a terminal condition are governed by three separate chapters within two different codes: Chapters 672 and 674, Health and Safety Code, and Chapter 135, Civil Practice and Remedies Code. The three chapters use similar terminology, have repetitive provisions, and deal with the issue of a directive or an order withholding or withdrawing life-sustaining procedures of an individual with a terminal condition. Inconsistencies between the three chapters causes confusion for individuals who want to develop advance directives or orders as well as providers who must carry out such directives or orders. This bill would consolidate and set forth uniform provisions governing the execution of these advance directives or orders.

### **PURPOSE**

As proposed, C.S.S.B. 414 sets forth the conditions for execution of an advance directive in regard to the withholding or withdrawing life-sustaining procedures in the event of a terminal condition and redesignates the following relevant provisions under Chapter 166, Health and Safety Code: Chapter 672, Health and Safety Code, relating to the Natural Death Act; Chapter 676, Health and Safety Code, relating to out-of-hospital do-not-resuscitate orders; and Chapter 135, Civil Practice and Remedies Code, relating to the durable power-of-attorney for health care.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1.02. Amends Title 2H, Health and Safety Code, by adding Chapter 166, as follows:

#### **CHAPTER 166. ADVANCE DIRECTIVES**

SECTION 1.02. Amends Title 2H, Health and Safety Code, by adding Chapter 166A, as follows:

#### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 166.001. **SHORT TITLE: ADVANCE DIRECTIVES ACT.**

Sec. 166.002. **DEFINITIONS.** Defines "advance directive," "attending physician," "competent," "declarant," "durable power of attorney for health care," "incompetent," "life-sustaining procedure," "physician," "terminal condition," and "witness."

Sec. 166.003. **WITNESSES.** Sets forth who may not be a witness to the execution of an advance directive or the issuance of a nonwritten advance directive.

SECTION 1.03. Amends Chapter 672, Health and Safety Code, by transferring it to Title 2H, Health and Safety Code, redesignated as Chapter 166B, Health and Safety Code, as follows:

#### **SUBCHAPTER B. NATURAL DEATH**

Sec. 166.031. DEFINITIONS. Redesignated from existing Section 672.002. Redefines "directive." Deletes definitions of "attending physician," "competent," "declarant," "incompetent," "life-sustaining procedure," "physician," and "terminal condition." Makes conforming changes.

Sec. 166.032. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. Makes conforming changes.

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. Makes conforming changes.

Sec. 166.034. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. Makes conforming changes.

Sec. 166.035. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. Makes a conforming change.

Sec. 166.036. NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED. Provides that a written directive executed under Section 166.033 or 166.035 does not need to be notarized. Prohibits a physician, health care facility, or health care professional from requiring that the directive be notarized or a person use a form provided by the physician, health care facility, or health care professional.

Sec. 166.037. PATIENT DESIRE SUPERSEDES DIRECTIVE. Makes a conforming change.

Sec. 166.038. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. Makes conforming changes.

Sec. 166.039. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. Authorizes an attending physician and the patient's legal guardian or an agent under a durable power of attorney for health care to make a treatment decision to withhold or withdraw life-sustaining procedures from the patient, if the patient has not executed or issued a directive and is comatose, incompetent, or otherwise mentally or physically incapable of communication. Authorizes an attending physician and one person, rather than two, from a specified category, to make a treatment decision if the patient does not have a legal guardian or an agent under a durable power of attorney for health care. Makes conforming changes.

Sec. 166.040. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. Makes conforming changes.

Sec. 166.041. DURATION OF DIRECTIVE. Makes conforming changes.

Sec. 166.042. REVOCATION OF DIRECTIVE. Makes conforming changes.

Sec. 166.043. REEXECUTION OF DIRECTIVE. Makes conforming changes.

Sec. 166.044. EFFECT OF DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. Makes conforming changes.

Sec. 166.045. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES. Provides that a physician or health facility that, in good faith, causes life-sustaining procedures to be withheld or withdrawn from a patient in accordance with this subchapter is not civilly liable for that action. Deletes the negligent exception to such prohibition of civil liability. Makes conforming changes.

Sec. 166.046. LIMITATION OF LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE. Makes a conforming change.

Sec. 166.047. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. Makes conforming changes.

Sec. 166.048. CRIMINAL PENALTY; PROSECUTION. Makes a conforming change.

Sec. 166.049. PREGNANT PATIENTS. Makes conforming changes.

Sec. 166.050. MERCY KILLING NOT CONDONED. Makes conforming changes.

Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. Makes conforming changes.

SECTION 1.04. Amends Chapter 674, Health and Safety Code, by transferring it to Title 2H, Health and Safety Code, redesignated as Chapter 166C, Health and Safety Code, as follows:

SUBCHAPTER C. New heading: OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

Sec. 166.081. DEFINITIONS. Redesignated from existing Section 674.001. Deletes definitions of "attending physician," "board," "competent," "declarant," "department," "durable power of attorney for health care," "incompetent," "life-sustaining procedure," "physician," and "terminal condition." Redefines "DNR identification device" and "proxy." Makes conforming changes.

Sec. 166.082. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. Deletes existing Subsection (c) regarding witness qualifications, and a reference to an executed or issued durable power of attorney for health care in accordance with Chapter 135, Civil Practice and Remedies Code. Makes conforming changes.

Sec. 166.083. FORM OF OUT-OF-HOSPITAL DNR ORDER. Makes conforming changes.

Sec. 166.084. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. Makes conforming changes.

Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. Makes a conforming change.

Sec. 166.086. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. Makes conforming changes.

Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. Makes conforming changes.

Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. Makes conforming changes.

Sec. 166.089. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. Provides that health care hospitals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter, rather than chapter. Makes conforming changes.

Sec. 166.090. DNR IDENTIFICATION DEVICE. Makes conforming changes.

Sec. 166.091. DURATION OF OUT-OF-HOSPITAL DNR ORDER. Makes conforming changes.

Sec. 166.092. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. Makes conforming changes.

Sec. 166.093. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. Makes conforming changes.

Sec. 166.094. CONFLICT WITH NATURAL DEATH ACT OR DURABLE POWER OF ATTORNEY FOR HEALTH CARE. Makes conforming changes.

Sec. 166.095. EFFECT OF OUT-OF-HOSPITAL DNR ORDER ON INSURANCE POLICY AND PREMIUMS. Makes conforming changes.

Sec. 166.096. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. Makes conforming changes.

Sec. 166.097. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. Makes a conforming change.

Sec. 166.098. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE.. Makes conforming changes.

Sec. 166.099. CRIMINAL PENALTY; PROSECUTION. Makes conforming changes.

Sec. 166.100. PREGNANT PERSONS. Makes conforming changes.

Sec. 166.101. MERCY KILLING NOT CONDONED. Makes conforming changes.

Sec. 166.102. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. Makes conforming changes.

Sec. 166.103. DUTIES OF DEPARTMENT AND BOARD. Makes conforming changes.

Sec. 166.104. RECOGNITION OF OUT-OF-HOSPITAL DNR ORDER EXECUTED OR ISSUED IN OTHER STATE. Makes conforming changes.

SECTION 1.05. Amends Chapter 135, Civil Practice and Remedies Code, by transferring it to Title 2H, Health and Safety Code, redesignated as Chapter 166D, Health and Safety Code, as follows:

#### SUBCHAPTER D. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Sec. 166.151. DEFINITIONS. Redesignated from existing Section 135.001. Deletes definitions of "attending physician," "capacity to make health care decisions," "durable power of attorney for health care," "health care decision," and "physician." Makes conforming changes.

Sec. 166.152. SCOPE AND DURATION OF AUTHORITY. Makes conforming changes.

Sec. 166.153. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. Makes a conforming change.

Sec. 166.154. EXECUTION AND WITNESSES. Requires the durable power of attorney for health care to be signed by the principal in the presence of at least two, instead of two or more, subscribing witnesses. Requires a witness to possess the qualifications and be subject to the restrictions provided by Section 166.003. Makes conforming changes.

Sec. 166.155. REVOCATION. Makes conforming changes.

Sec. 166.156. APPOINTMENT OF GUARDIAN. Makes a conforming change.

Sec. 166.157. DISCLOSURE OF MEDICAL INFORMATION. Makes a conforming

change.

Sec. 166.158. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. Makes conforming changes.

Sec. 166.159. DISCRIMINATION RELATING TO EXECUTION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. Makes a conforming change.

Sec. 166.160. LIMITATION ON LIABILITY. Makes conforming changes.

Sec. 166.161. LIABILITY FOR HEALTH CARE COSTS. Makes a conforming change.

Sec. 166.162. NATURAL DEATH ACT. Makes conforming changes.

Sec. 166.163. ENFORCEABILITY OF DURABLE POWER OF ATTORNEY EXECUTED IN ANOTHER JURISDICTION. Makes conforming changes.

Sec. 166.164. DISCLOSURE STATEMENT. Makes a conforming change.

Sec. 166.165. FORM OF DISCLOSURE STATEMENT. Makes conforming changes.

Sec. 166.166. FORM OF DURABLE POWER OF ATTORNEY. Sets forth the language required in the statement of witnesses. Deletes certain declarations in the statement. Makes conforming and nonsubstantive changes.

Sec. 166.167. CIVIL ACTION. Makes conforming changes.

Sec. 166.168. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. Makes conforming changes.

SECTION 2.01. Amends Section 313.003(a), Health and Safety Code, to make conforming and standard recodification changes.

SECTION 3.01. Effective date: January 1, 1998.

SECTION 3.02. Makes application of this Act prospective.

SECTION 3.03. Makes application of this Act prospective.

SECTION 3.04. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.02.

Amends Section 166.002(7), Health and Safety Code, to revise the proposed definition of "life-sustaining procedure."

SECTION 1.03.

Amends Section 166.031(6), Health and Safety Code, to delete the definition of "life-sustaining procedure" and make conforming changes. Amends Section 166.039(b), Health and Safety Code, to authorize the attending physician to make a treatment decision, if the patient does not have a legal guardian or an agent under a durable power of attorney for health care. Amends page 5, line 25, Section 166.031(2), Health and Safety Code, to strike "and one other physician who has have" and insert "and one other physician who have." This change restores "qualified patient" to its original definition before any proposed changes set forth by this bill. Amends page 7, lines 23-24, Section 166.033, Health and Safety Code, to strike "my attending physician" and insert "two physicians." This change restores part of the

written directive back to its original form prior to any proposed changes set forth by this Act.

SECTION 1.04.

Amends Section 166.081(13), Health and Safety Code, to delete the definition of "life-sustaining procedure" and make conforming changes. Amends Section 166.089(e), Health and Safety Code, to make conforming changes. Amends Section 166.103(a)(2), Health and Safety Code, to make nonsubstantive changes. Amends page 20, lines 4-5, Section 166.081(6)(B), Health and Safety Code, to strike the phrase deleting "or to provide water or nutrition," to insert the phrase "or to provide water or nutrition." This change restores "out-of-hospital DNR order" back to its original form prior to any proposed changes by this bill. "Out-of-hospital DNR order" still has proposed conforming changes due to changes in the law from this Act.

SECTION 1.05.

Amends Section 166.166, Health and Safety Code, to make a nonsubstantive change.

SECTION 3.02.

Amends to make a nonsubstantive change.