

BILL ANALYSIS

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S.B. 1944
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Advanced directives are legal documents that spell out what kind of end-of-life care a person would like to receive. In cases where treatment would not save a patient and only prolong pain and suffering, doctors may refuse to adhere to the advance directives. This triggers a review process of a hospital's ethics committee of the case as outlined in the Health and Safety Code. Throughout this process, the patient continues receiving life-sustaining care. Currently, patients' families believe their voices are not being heard as part of this process and that the lives of their loved ones are left in the hands of a committee without their input.

S.B. 1944 recognizes a patient's family as an important part of the process. It directs the hospital's ethics committee to appoint a patient liaison, who is knowledgeable about end-of-life issues and hospice care, to inform the family of the process. It also allows a surrogate for the patient to be present at the ethics committee meetings. S.B. 1944 will extend the ten-day process to a twenty-one-day process, including a seven-day notice before an ethics committee meeting is held as well as fourteen days, up from ten in current law, to transfer the patient to a new facility. This legislation will enhance families' abilities to determine their loved one's end-of-life care.

As proposed, S.B. 1944 amends current law relating to end-of-life issues and hospice care.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 5 (Section 166.054, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 166, Health and Safety Code, by adding Section 166.012, as follows:

Sec. 166.012. PATIENT AND PROVIDER AUTONOMY. Provides that Chapter 166 (Advance Directives) does not authorize a surrogate or patient's proxy to supersede the patient's wishes or desires, if known by the patient's physician, family member, or surrogate; subject to Section 166.046 (Procedure if Not Effectuating a Directive or Treatment Decision), does not require a health care provider to continue treatment or care considered outside the appropriate scope of care or in violation of the provider's ethical duties; or does not prohibit a health care provider or facility from performing any test or diagnostic necessary to determine the patient's medical condition or related functions.

SECTION 2. Amends Section 166.046, Health and Safety Code, by adding Subsections (a-1), (a-2), and (b-1) and amending Subsections (b), (c), and (e), as follows:

(a-1) Requires an ethics or medical committee, when an ethics or medical committee review is initiated under Chapter 166, to inform the patient or surrogate that the patient or surrogate may discontinue the process under Section 166.046 by providing written notice to the ethics or medical committee; to appoint a patient liaison familiar with end-of-life issues and hospice care options to assist the patient or surrogate throughout the process described by Section 166.046; and to advise the patient or surrogate that the patient's

attending physician may present medical facts at the meeting of the ethics or medical committee.

(a-2) Provides that the patient's attending physician is authorized to attend and present facts at an ethics or medical committee review meeting initiated under this chapter but is prohibited from participating as a member of the committee in the review of that case.

(b) Requires the committee, when a meeting of the ethics or medical committee is required under Section 166.046, not later than the seventh calendar day before the date scheduled for that meeting, unless this period is waived by mutual agreement, to provide to the patient or surrogate:

(1) a written description of the ethics or medical committee review process and any other policies and procedures related to Section 166.046 adopted by the health care facility;

(2) notice that the patient or surrogate is entitled to receive the continued assistance of a patient liaison to assist the patient or surrogate throughout the review process;

(3) notice that the patient or surrogate may seek a second opinion at the patient's or surrogate's expense from other medical professionals regarding the patient's medical status and treatment requirements, and may communicate the resulting information to the members of the committee for consideration before the meeting;

(4) a copy of the appropriate statement set forth in Section 166.052 (Statements Explaining Patient's Right to Transfer); and

(5) a copy of the registry list of health care providers, health care facilities, and referral groups that, in compliance with any state laws prohibiting barratry, 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 department under Section 166.053 (Registry to Assist Transfers).

Deletes existing text providing 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 is authorized to 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, and is required to 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. Makes nonsubstantive changes.

(b-1) Provides that the patient or surrogate is entitled to:

(1) an invitation to attend and participate in the meeting of the ethics or medical committee, excluding the committee's deliberations, if the patient or surrogate elects to attend or participate in, rather than to attend, the meeting;

(2) be accompanied at the meeting by as many as five persons, or more persons at the committee's discretion, for support, subject to the facility's reasonable written attendance policy as necessary to facilitate information sharing and discussion of the patient's medical status and treatment requirements, and to preserve the order and decorum of the meeting;

(3)-(5) creates these subdivisions from existing text and makes conforming and nonsubstantive changes.

(c) Makes a conforming change.

(e) 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 14th calendar day, rather than 10th day, after both the written decision and the patient's medical record required under Subsection (b-1), rather than in 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) (relating to a court ordered extension of certain time periods), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would result in certain undesired outcomes.

SECTION 3. Amends Subchapter B, Chapter 166, Health and Safety Code, by adding Section 166.0465, as follows:

Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE POLICIES; CONFLICTS OF INTEREST AND DISCRIMINATION. Requires each health care facility that provides review by an ethics or medical committee under Section 166.046 to adopt and implement a policy on preventing financial and health care professional conflicts of interest that may arise during a review under that section; on allowing participation on, and interaction with, the committee by telephone, videoconference, or other secure electronic means; and on prohibiting consideration of a patient's permanent physical or mental disability during the review unless the disability is relevant in determining whether a medical or surgical intervention is medically appropriate.

SECTION 4. Amends Sections 166.052(a) and (b), Health and Safety Code, as follows:

(a) Requires that the statement required by Section 166.046(b)(4) (relating to a statement explaining a patient's right to transfer), rather than by Section 166.046(b)(3)(A), 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. Sets forth the required text of the form. Makes conforming changes.

(b) Requires that the statement required by Section 166.046(b)(4) (relating to a statement explaining a patient's right to transfer), rather than by Section 166.046(b)(3)(A), 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. Sets forth the required text of the form. Makes conforming changes.

SECTION 5. Amends Subchapter B, Chapter 166, Health and Safety Code, by adding Section 166.054, as follows:

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESSES. (a) Requires a facility in which one or more meetings of an ethics or medical committee are held under Chapter 166, on submission of a health care facility's application to renew its license, to file a report with the Department of State Health Services (DSHS) that contains aggregate information regarding the number of cases initiated by an ethics or medical committee under Section 166.046 and the disposition of those cases by the facility.

(b) Authorizes aggregate data submitted to DSHS under this section to include only the following:

(1) the total number of patients for whom a review by the ethics or medical committee was initiated under Section 166.046(b) (relating to certain information provided to a patient before a meeting);

(2) the number of patients under Subdivision (1) who were transferred to another physician within the same facility, or to a different facility;

(3) the number of patients under Subdivision (1) who were discharged to home;

(4) the number of patients under Subdivision (1) for whom treatment was withheld or withdrawn pursuant to surrogate consent before the decision was rendered following a review under Section 166.046(b), after the decision was rendered following a review under Section 166.046(b), or during or after the 14-calendar-day period described by Section 166.046(e) (relating to a physician or facility not being obligated to provide life-sustaining treatment after the 14th calendar day after certain procedures are carried out);

(5) the average length of stay before a review meeting is held under Section 166.046(b); and

(6) the number of patients under Subdivision (1) who died while still receiving life-sustaining treatment before the review meeting under Section 166.046(b), during the 14-calendar-day period described by Section 166.046(e), or during any extension of the 14-calendar-day period described by Section 166.046(e).

(c) Prohibits the report required by this section from containing any data specific to an individual patient or physician.

(d) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to establish a standard form for the reporting requirements of this section, and post on DSHS's Internet website the data submitted under Subsection (b) in the format provided by rule.

(e) Provides that data collected as required by, or submitted to DSHS under, this section is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant; and is prohibited from being used in relation to any disciplinary action by a licensing board or other body with professional or administrative oversight over a physician, health care professional acting under the direction of a physician, or health care facility.

SECTION 6. Amends Section 166.202(a), Health and Safety Code, to provide that Subchapter E (Health Care Facility Do-Not-Resuscitate Orders) applies to a DNR order issued for a patient who has been admitted to a health care facility or hospital, rather than applies to a DNR order issued in a health care facility or hospital.

SECTION 7. Amends Sections 166.203(a), (b), and (c), Health and Safety Code, as follows:

(a) Provides that a DNR order issued for a patient is valid only if a physician providing direct care to the patient, rather than only if the patient's attending physician, issues the order, the order is dated, and the order:

(1) is issued in compliance with certain directions, including the directions in an advance directive executed in accordance with certain sections, including Section 166.082 (Out-Of-Hospital DNR Order; Directive to Physicians), 166.084 (Issuance of Out-Of-Hospital DNR Order by Nonwritten Communication), or 166.085 (Execution of Out-Of-Hospital DNR Order on Behalf of a Minor; and in compliance with the directions of certain individuals, including a patient's proxy as designated and authorized by a directive executed or issued in accordance with Subchapter B (Directive to Physicians) to make a treatment decision for the

patient if the patient becomes incompetent or otherwise mentally or physically incapable of communication; 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 physician issuing the order, rather than of the patient's attending physician, the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and the DNR order is medically appropriate.

Makes nonsubstantive changes.

(b) Authorizes the DNR order to be issued and entered in any format acceptable under the policies of the health care facility or hospital. Makes a nonsubstantive change.

(c) Requires a physician, a physician assistant, a nurse, or another person acting on behalf of a health care facility or hospital, unless notice has already been provided in accordance with Section 166.204(a-1) (relating to disclosure of a DNR order to a patient's known agent under medical power of attorney or legal guardian), before placing in a patient's medical record a DNR order issued under Subsection (a)(2) (relating to physician's certain judgments about the appropriateness of a DNR order), to inform certain individuals about the order's issuance.

SECTION 8. Amends Section 166.204, Health and Safety Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a physician, a physician assistant, a nurse, or another person acting on behalf of a health care facility or hospital, if a physician issues a DNR order under Section 166.203(a)(2), to provide notice of the order to the appropriate persons in accordance with Subsection (a-1) of this section or Section 166.203(c) (relating to informing certain individuals prior to placing a DNR order in a patient's medical record).

(a-1) Requires the physician, physician assistant, or nurse who has actual knowledge of the order, unless notice has already been provided in accordance with Section 166.203(c), 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 is the patient's known agent or has certain relations to the patient.

SECTION 9. Amends Sections 166.205(a), (b), and (c), Health and Safety Code, as follows:

(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 advance directive on which the DNR order is based is properly revoked in accordance with applicable provisions of Chapter 166; or the patient or the individual at whose direction the DNR order was issued 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) (relating to requirements for a valid DNR order). Deletes existing text requiring 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 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).

(b) Requires a person providing direct care to a patient under the supervision of a physician to notify the physician of the revocation of the advance directive or the request to revoke a DNR order under Subsection (a), rather than of the request to revoke a DNR order under Subsection (a).

(c) Authorizes the physician who issued a DNR order issued under Section 166.203(a)(2), or any other attending physician providing direct care to the patient in accordance with applicable hospital policies, rather than a patient's attending physician, to at any time revoke the DNR order.

SECTION 10. Amends Sections 166.206(a) and (b), Health and Safety Code, as follows:

(a) Requires the physician, facility, or hospital, if a physician, rather than 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 cardiopulmonary resuscitation, 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 cardiopulmonary resuscitation.

(b) Makes a conforming change.

SECTION 11. Amends Section 166.209, Health and Safety Code, as follows:

Sec. 166.209. ENFORCEMENT. (a) Provides that, subject to Sections 166.205(d) (relating to a person not being liable for failing to act on a revocation if the person does not have actual knowledge of the revocation), 166.207 (Limitation on Liability for Issuing DNR Order or Withholding Cardiopulmonary Resuscitation), and 166.208 (Limitation on Liability for Failure to Effectuate DNR Order), a physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate the requirements of Subchapter E (Health Care Facility Do-Not-Resuscitate Orders), the person intentionally conceals, cancels, effectuates, or falsifies another person's DNR order; or conceals or withholds personal knowledge of another person's revocation of a DNR order.

(a-1) Creates this subsection from existing text and makes conforming changes.

(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 committing certain violations of Subchapter E, subject to Sections 166.205(d), 166.207, and 166.208.

SECTION 12. Amends Section 313.004(a), Health and Safety Code, as follows:

(a) Authorizes an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient, if an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and does not have a legal guardian or an agent under a medical power of attorney who can concur with the patient's attending physician, rather than if an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication, to consent to medical treatment on behalf of the patient in concurrence with the patient's attending physician:

(1) the patient's spouse;

(2) the patient's reasonably available adult children, rather than an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;

(3) the patient's parents, rather than a majority of the patient's reasonably available adult children;

(4) the patient's nearest living relative, rather than the patient's parents; or

(5) if the patient does not have a legal guardian or an agent under a medical power of attorney and a person listed in this subsection is not available, another licensed physician who is not involved in the direct treatment of the patient, rather than the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

SECTION 13. Requires the executive commissioner, not later than March 1, 2022, to adopt the rules necessary to implement the changes in law made by this Act to Chapter 166, Health and Safety Code.

SECTION 14. Provides that Chapter 166, Health and Safety Code, as amended 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, 2022. Provides that a review, consultation, disagreement, or other action relating to a health care or treatment decision made before April 1, 2022, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 15. Provides that Chapter 166, Health and Safety Code, as amended by this Act, applies only to a do-not-resuscitate order issued on or after the effective date of this Act. Provides that a do-not-resuscitate order issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and that law is continued in effect for that purpose.

SECTION 16. (a) Requires a health care facility to adopt the policy required by Section 166.0465, Health and Safety Code, as added by this Act, not later than April 1, 2022.

(b) Provides that a policy adopted under Section 166.0465, Health and Safety Code, as added by this Act, applies only to an ethics or medical committee review conducted on or after April 1, 2022.

SECTION 17. Effective date: September 1, 2021.