

By: Springer

H.B. No. 3074

A BILL TO BE ENTITLED

AN ACT

relating to the provision of artificially administered nutrition and hydration and life-sustaining treatment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 166.002(2) and (10), Health and Safety Code, are amended to read as follows:

(2) "Artificially administered [~~Artificial~~] nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the [~~stomach~~] gastrointestinal tract[~~]~~).

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered [~~artificial~~] nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

SECTION 2. Section 166.003, Health and Safety Code, is amended to read as follows:

Sec. 166.003. WITNESSES. In any circumstance in which this chapter requires the execution of an advance directive or the

1 issuance of a nonwritten advance directive to be witnessed:

2 (1) each witness must be a competent adult; and

3 (2) at least one of the witnesses must be a person who  
4 is not:

5 (A) a person designated by the declarant to make  
6 a health care or treatment decision;

7 (B) a person related to the declarant by blood or  
8 marriage;

9 (C) a person entitled to any part of the  
10 declarant's estate after the declarant's death under a will or  
11 codicil executed by the declarant or by operation of law;

12 (D) the attending physician;

13 (E) an employee of the attending physician;

14 (F) an employee of a health care facility in  
15 which the declarant is a patient if the employee is providing direct  
16 patient care to the declarant or is an officer, director, partner,  
17 or business office employee of the health care facility or of any  
18 parent organization of the health care facility; or

19 (G) a person who, at the time the written advance  
20 directive is executed or, if the directive is a nonwritten  
21 directive issued under this chapter, at the time the nonwritten  
22 directive is issued, has a claim against any part of the declarant's  
23 estate after the declarant's death.

24 SECTION 3. Section 166.032(c), Health and Safety Code, is  
25 amended to read as follows:

26 (c) A declarant may include in a directive directions other  
27 than those provided by Section 166.033 and may designate in a

1 directive a person to make a health care or treatment decision for  
2 the declarant in the event the declarant becomes incompetent or  
3 otherwise mentally or physically incapable of communication.

4 SECTION 4. Section 166.033, Health and Safety Code, is  
5 amended to read as follows:

6 Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written  
7 directive may be in the following form:

8 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

9 Instructions for completing this document:

10 This is an important legal document known as an Advance  
11 Directive. It is designed to help you communicate your wishes about  
12 medical treatment at some time in the future when you are unable to  
13 make your wishes known because of illness or injury. These wishes  
14 are usually based on personal values. In particular, you may want  
15 to consider what burdens or hardships of treatment you would be  
16 willing to accept for a particular amount of benefit obtained if you  
17 were seriously ill.

18 You are encouraged to discuss your values and wishes with  
19 your family or chosen spokesperson, as well as your physician. Your  
20 physician, other health care provider, or medical institution may  
21 provide you with various resources to assist you in completing your  
22 advance directive. Brief definitions are listed below and may aid  
23 you in your discussions and advance planning. Initial the  
24 treatment choices that best reflect your personal preferences.  
25 Provide a copy of your directive to your physician, usual hospital,  
26 and family or spokesperson. Consider a periodic review of this  
27 document. By periodic review, you can best assure that the

1 directive reflects your preferences.

2 In addition to this advance directive, Texas law provides for  
3 two other types of directives that can be important during a serious  
4 illness. These are the Medical Power of Attorney and the  
5 Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss  
6 these with your physician, family, hospital representative, or  
7 other advisers. You may also wish to complete a directive related  
8 to the donation of organs and tissues.

9 DIRECTIVE

10 I, \_\_\_\_\_, recognize that the best health care is based  
11 upon a partnership of trust and communication with my physician. My  
12 physician and I will make health care or treatment decisions  
13 together as long as I am of sound mind and able to make my wishes  
14 known. If there comes a time that I am unable to make medical  
15 decisions about myself because of illness or injury, I direct that  
16 the following treatment preferences be honored:

17 If, in the judgment of my physician, I am suffering with a  
18 terminal condition from which I am expected to die within six  
19 months, even with available life-sustaining treatment provided in  
20 accordance with prevailing standards of medical care:

21 \_\_\_\_\_ I request that all treatments other than those needed  
22 to keep me comfortable be discontinued or withheld and  
23 my physician allow me to die as gently as possible; OR

24 \_\_\_\_\_ I request that I be kept alive in this terminal  
25 condition using available life-sustaining treatment.

26 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

27 If, in the judgment of my physician, I am suffering with an

1 irreversible condition so that I cannot care for myself or make  
2 decisions for myself and am expected to die without life-sustaining  
3 treatment provided in accordance with prevailing standards of care:

4 \_\_\_\_\_ I request that all treatments other than those needed  
5 to keep me comfortable be discontinued or withheld and  
6 my physician allow me to die as gently as possible; OR

7 \_\_\_\_\_ I request that I be kept alive in this irreversible  
8 condition using available life-sustaining treatment.

9 (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

10 Additional requests: (After discussion with your physician,  
11 you may wish to consider listing particular treatments in this  
12 space that you do or do not want in specific circumstances, such as  
13 artificially administered [~~artificial~~] nutrition and hydration  
14 [~~fluids~~], intravenous antibiotics, etc. Be sure to state whether  
15 you do or do not want the particular treatment.)

16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_

19 After signing this directive, if my representative or I elect  
20 hospice care, I understand and agree that only those treatments  
21 needed to keep me comfortable would be provided and I would not be  
22 given available life-sustaining treatments.

23 If I do not have a Medical Power of Attorney, and I am unable  
24 to make my wishes known, I designate the following person(s) to make  
25 health care or treatment decisions with my physician compatible  
26 with my personal values:

- 27 1. \_\_\_\_\_

1           2. \_\_\_\_\_

2           (If a Medical Power of Attorney has been executed, then an  
3 agent already has been named and you should not list additional  
4 names in this document.)

5           If the above persons are not available, or if I have not  
6 designated a spokesperson, I understand that a spokesperson will be  
7 chosen for me following standards specified in the laws of Texas.  
8 If, in the judgment of my physician, my death is imminent within  
9 minutes to hours, even with the use of all available medical  
10 treatment provided within the prevailing standard of care, I  
11 acknowledge that all treatments may be withheld or removed except  
12 those needed to maintain my comfort. I understand that under Texas  
13 law this directive has no effect if I have been diagnosed as  
14 pregnant. This directive will remain in effect until I revoke it.  
15 No other person may do so.

16           Signed \_\_\_\_\_ Date \_\_\_\_\_ City, County, State of  
17 Residence \_\_\_\_\_

18           Two competent adult witnesses must sign below, acknowledging  
19 the signature of the declarant. The witness designated as Witness 1  
20 may not be a person designated to make a health care or treatment  
21 decision for the patient and may not be related to the patient by  
22 blood or marriage. This witness may not be entitled to any part of  
23 the estate and may not have a claim against the estate of the  
24 patient. This witness may not be the attending physician or an  
25 employee of the attending physician. If this witness is an employee  
26 of a health care facility in which the patient is being cared for,  
27 this witness may not be involved in providing direct patient care to

1 the patient. This witness may not be an officer, director, partner,  
2 or business office employee of a health care facility in which the  
3 patient is being cared for or of any parent organization of the  
4 health care facility.

5 Witness 1 \_\_\_\_\_ Witness 2 \_\_\_\_\_

6 Definitions:

7 "Artificially administered [~~Artificial~~] nutrition and  
8 hydration" means the provision of nutrients or fluids by a tube  
9 inserted in a vein, under the skin in the subcutaneous tissues, or  
10 in the [~~stomach~~] gastrointestinal tract[~~]~~].

11 "Irreversible condition" means a condition, injury, or  
12 illness:

13 (1) that may be treated, but is never cured or  
14 eliminated;

15 (2) that leaves a person unable to care for or make  
16 decisions for the person's own self; and

17 (3) that, without life-sustaining treatment provided  
18 in accordance with the prevailing standard of medical care, is  
19 fatal.

20 Explanation: Many serious illnesses such as cancer, failure  
21 of major organs (kidney, heart, liver, or lung), and serious brain  
22 disease such as Alzheimer's dementia may be considered irreversible  
23 early on. There is no cure, but the patient may be kept alive for  
24 prolonged periods of time if the patient receives life-sustaining  
25 treatments. Late in the course of the same illness, the disease may  
26 be considered terminal when, even with treatment, the patient is  
27 expected to die. You may wish to consider which burdens of

1 treatment you would be willing to accept in an effort to achieve a  
2 particular outcome. This is a very personal decision that you may  
3 wish to discuss with your physician, family, or other important  
4 persons in your life.

5 "Life-sustaining treatment" means treatment that, based on  
6 reasonable medical judgment, sustains the life of a patient and  
7 without which the patient will die. The term includes both  
8 life-sustaining medications and artificial life support such as  
9 mechanical breathing machines, kidney dialysis treatment, and  
10 artificially administered nutrition and ~~[artificial]~~ hydration  
11 ~~[and nutrition]~~. The term does not include the administration of  
12 pain management medication, the performance of a medical procedure  
13 necessary to provide comfort care, or any other medical care  
14 provided to alleviate a patient's pain.

15 "Terminal condition" means an incurable condition caused by  
16 injury, disease, or illness that according to reasonable medical  
17 judgment will produce death within six months, even with available  
18 life-sustaining treatment provided in accordance with the  
19 prevailing standard of medical care.

20 Explanation: Many serious illnesses may be considered  
21 irreversible early in the course of the illness, but they may not be  
22 considered terminal until the disease is fairly advanced. In  
23 thinking about terminal illness and its treatment, you again may  
24 wish to consider the relative benefits and burdens of treatment and  
25 discuss your wishes with your physician, family, or other important  
26 persons in your life.

27 SECTION 5. Section [166.046\(e\)](#), Health and Safety Code, is

1 amended to read as follows:

2 (e) If the patient or the person responsible for the health  
3 care decisions of the patient is requesting life-sustaining  
4 treatment that the attending physician has decided and the ethics  
5 or medical committee [~~review process~~] has affirmed is medically  
6 inappropriate treatment, the patient shall be given available  
7 life-sustaining treatment pending transfer under Subsection (d).  
8 This subsection does not authorize withholding or withdrawing pain  
9 management medication, medical procedures necessary to provide  
10 comfort, or any other health care provided to alleviate a patient's  
11 pain. The patient is responsible for any costs incurred in  
12 transferring the patient to another facility. The attending  
13 physician, any other physician responsible for the care of the  
14 patient, and the health care facility are not obligated to provide  
15 life-sustaining treatment after the 10th day after the written  
16 decision required under Subsection (b) is provided to the patient  
17 or the person responsible for the health care decisions of the  
18 patient unless ordered to do so under Subsection (g), except that  
19 artificially administered nutrition and hydration must be provided  
20 unless, based on reasonable medical judgment, providing  
21 artificially administered nutrition and hydration would:

- 22 (1) hasten the patient's death;  
23 (2) seriously exacerbate other major medical problems  
24 not outweighed by the benefit of the provision of the treatment;  
25 (3) result in substantial irremediable physical pain,  
26 suffering, or discomfort not outweighed by the benefit of the  
27 provision of the treatment;



1 committee. Life-sustaining treatment will be provided through the  
2 review.

3 You will receive notification of this review at least 48  
4 hours before a meeting of the committee related to your case. You  
5 are entitled to attend the meeting. With your agreement, the  
6 meeting may be held sooner than 48 hours, if possible.

7 You are entitled to receive a written explanation of the  
8 decision reached during the review process.

9 If after this review process both the attending physician and  
10 the ethics or medical committee conclude that life-sustaining  
11 treatment is medically inappropriate and yet you continue to  
12 request such treatment, then the following procedure will occur:

13 1. The physician, with the help of the health care facility,  
14 will assist you in trying to find a physician and facility willing  
15 to provide the requested treatment.

16 2. You are being given a list of health care providers,  
17 licensed physicians, health care facilities, and referral groups  
18 that have volunteered their readiness to consider accepting  
19 transfer, or to assist in locating a provider willing to accept  
20 transfer, maintained by the Department of State [~~Texas~~] Health  
21 Services [~~Care Information Council~~]. You may wish to contact  
22 providers, facilities, or referral groups on the list or others of  
23 your choice to get help in arranging a transfer.

24 3. The patient will continue to be given life-sustaining  
25 treatment and treatment to enhance pain management and reduce  
26 suffering, including artificially administered nutrition and  
27 hydration unless, based on reasonable medical judgment, providing

1 artificially administered nutrition and hydration would hasten the  
2 patient's death, seriously exacerbate other major medical  
3 problems, result in substantial irremediable physical pain,  
4 suffering, or discomfort not outweighed by the benefit of the  
5 treatment, be medically ineffective, or be contrary to the  
6 patient's clearly stated desires, until the patient [~~he or she~~] can  
7 be transferred to a willing provider for up to 10 days from the time  
8 you were given the committee's written decision that  
9 life-sustaining treatment is not appropriate.

10 4. If a transfer can be arranged, the patient will be  
11 responsible for the costs of the transfer.

12 5. If a provider cannot be found willing to give the  
13 requested treatment within 10 days, life-sustaining treatment may  
14 be withdrawn unless a court of law has granted an extension.

15 6. You may ask the appropriate district or county court to  
16 extend the 10-day period if the court finds that there is a  
17 reasonable expectation that you may find a physician or health care  
18 facility willing to provide life-sustaining treatment [~~will be~~  
19 ~~found~~] if the extension is granted.

20 \*"Life-sustaining treatment" means treatment that, based on  
21 reasonable medical judgment, sustains the life of a patient and  
22 without which the patient will die. The term includes both  
23 life-sustaining medications and artificial life support, such as  
24 mechanical breathing machines, kidney dialysis treatment, and  
25 artificially administered [~~artificial~~] nutrition and hydration.  
26 The term does not include the administration of pain management  
27 medication or the performance of a medical procedure considered to

1 be necessary to provide comfort care, or any other medical care  
2 provided to alleviate a patient's pain.

3 (b) In cases in which the attending physician refuses to  
4 comply with an advance directive or treatment decision requesting  
5 the withholding or withdrawal of life-sustaining treatment, the  
6 statement required by Section 166.046(b)(3)(A) shall be in  
7 substantially the following form:

8 When There Is A Disagreement About Medical Treatment: The  
9 Physician Recommends Life-Sustaining Treatment That You Wish To  
10 Stop

11 You have been given this information because you have  
12 requested the withdrawal or withholding of life-sustaining  
13 treatment\* for yourself as the patient or on behalf of the patient,  
14 as applicable, and the attending physician disagrees with and  
15 refuses to comply with that request. The information is being  
16 provided to help you understand state law, your rights, and the  
17 resources available to you in such circumstances. It outlines the  
18 process for resolving disagreements about treatment among  
19 patients, families, and physicians. It is based upon Section  
20 166.046 of the Texas Advance Directives Act, codified in Chapter  
21 166, ~~[of the]~~ Texas Health and Safety Code.

22 When an attending physician refuses to comply with an advance  
23 directive or other request for withdrawal or withholding of  
24 life-sustaining treatment for any reason, the case will be reviewed  
25 by an ethics or medical committee. Life-sustaining treatment will  
26 be provided through the review.

27 You will receive notification of this review at least 48

1 hours before a meeting of the committee related to your case. You  
2 are entitled to attend the meeting. With your agreement, the  
3 meeting may be held sooner than 48 hours, if possible.

4 You are entitled to receive a written explanation of the  
5 decision reached during the review process.

6 If you or the attending physician do not agree with the  
7 decision reached during the review process, and the attending  
8 physician still refuses to comply with your request to withhold or  
9 withdraw life-sustaining treatment, then the following procedure  
10 will occur:

11 1. The physician, with the help of the health care facility,  
12 will assist you in trying to find a physician and facility willing  
13 to withdraw or withhold the life-sustaining treatment.

14 2. You are being given a list of health care providers,  
15 licensed physicians, health care facilities, and referral groups  
16 that have volunteered their readiness to consider accepting  
17 transfer, or to assist in locating a provider willing to accept  
18 transfer, maintained by the Department of State [~~Texas~~ Health  
19 Services [~~Care Information Council~~]. You may wish to contact  
20 providers, facilities, or referral groups on the list or others of  
21 your choice to get help in arranging a transfer.

22 \*"Life-sustaining treatment" means treatment that, based on  
23 reasonable medical judgment, sustains the life of a patient and  
24 without which the patient will die. The term includes both  
25 life-sustaining medications and artificial life support, such as  
26 mechanical breathing machines, kidney dialysis treatment, and  
27 artificially administered [~~artificial~~] nutrition and hydration.

1 The term does not include the administration of pain management  
2 medication or the performance of a medical procedure considered to  
3 be necessary to provide comfort care, or any other medical care  
4 provided to alleviate a patient's pain.

5 SECTION 7. Not later than March 1, 2016, the executive  
6 commissioner of the Health and Human Services Commission shall  
7 adopt all rules necessary to implement this Act.

8 SECTION 8. The change in law made by this Act applies only  
9 to a review, consultation, disagreement, or other action relating  
10 to a health care or treatment decision made on or after April 1,  
11 2016. A review, consultation, disagreement, or other action  
12 relating to a health care or treatment decision made before April 1,  
13 2016, is governed by the law in effect immediately before the  
14 effective date of this Act, and that law is continued in effect for  
15 that purpose.

16 SECTION 9. This Act takes effect September 1, 2015.