HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 166. ADVANCE DIRECTIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 166.001. SHORT TITLE. This chapter may be cited as the Advance Directives Act.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.002. DEFINITIONS. In this chapter:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or

(C) a medical power of attorney under Subchapter D.

(2) "Artificially administered 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 gastrointestinal tract.

(3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(5) "Declarant" means a person who has executed or issued a directive under this chapter.

(5-a) "Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(5-b) "Electronic signature" means a facsimile, scan, uploaded image, computer-generated image, or other electronic representation of a manual signature that is intended by the person using it to have the same force and effect of law as a manual signature.

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033.

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(9) "Irreversible condition" means a condition, injury, or illness:

(A) that may be treated but is never cured or eliminated;

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

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

(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 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.

(11) "Medical power of attorney" means a document

delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(12) "Physician" means:

(A) a physician licensed by the Texas Medical Board; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(13) "Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(14) "Witness" means a person who may serve as a witness under Section 166.003.

(15) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0499, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 1, eff. September 1, 2015.

Sec. 166.003. WITNESSES. In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

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

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

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

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

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

(D) the attending physician;

(E) an employee of the attending physician;

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

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

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 2, eff. September 1, 2015.

Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE. (a) In this section, "health care provider" means:

(1) a hospital;

(2) an institution licensed under Chapter 242, including a skilled nursing facility;

(3) a home and community support services agency;

(4) an assisted living facility; and

(5) a special care facility.

(b) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies

must include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with an advance directive.

(c) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (b). The notice must be provided at the earlier of:

(1) the time the individual is admitted to receive services from the health care provider; or

(2) the time the health care provider begins providing care to the individual.

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

(1) the individual's legal guardian;

(2) a person responsible for the health care decisions of the individual;

(3) the individual's spouse;

(4) the individual's adult child;

(5) the individual's parent; or

(6) the person admitting the individual.

(e) If Subsection (d) applies and except as provided by Subsection (f), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (d), the health care provider is not required to provide the notice.

(f) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (c) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(g) This section does not apply to outpatient hospital services, including emergency services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0500, eff. April 2, 2015.

Sec. 166.005. ENFORCEABILITY OF ADVANCE DIRECTIVES EXECUTED IN ANOTHER JURISDICTION. An advance directive or similar instrument validly executed in another state or jurisdiction shall be given the same effect as an advance directive validly executed under the law of this state. This section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.006. EFFECT OF ADVANCE DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an advance directive does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining treatment is withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining, under the life insurance policy, whether benefits are payable or the cause of death.

(c) The fact that a person has executed or issued or failed to execute or issue an advance directive may not be considered in any way in establishing insurance premiums.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.007. EXECUTION OF ADVANCE DIRECTIVE MAY NOT BE REQUIRED. A physician, health facility, health care provider,

insurer, or health care service plan may not require a person to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES. To the extent that a treatment decision or an advance directive validly executed or issued under this chapter conflicts with another treatment decision or an advance directive executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.009. CERTAIN LIFE-SUSTAINING TREATMENT NOT REQUIRED. This chapter may not be construed to require the provision of life-sustaining treatment that cannot be provided to a patient without denying the same treatment to another patient.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 2, eff. June 20, 2003.

Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE. (a) For an advance directive in which a signature by a declarant, witness, or notary public is required or used, the declarant, witness, or notary public may sign the directive or a written revocation of the directive using:

(1) a digital signature that:

(A) uses an algorithm approved by the department;

(B) is unique to the person using it;

(C) is capable of verification;

(D) is under the sole control of the person using it;

(E) is linked to data in a manner that invalidates the digital signature if the data is changed;

(F) persists with the document and not by association in separate files; and

(G) is bound to a digital certificate; or

(2) an electronic signature that:

(A) is capable of verification;

(B) is under the sole control of the person using it;

(C) is linked to data in a manner that invalidates the electronic signature if the data is changed; and

(D) persists with the document and not by association in separate files.

(b) In approving an algorithm for purposes of Subsection (a)(1)(A), the department may consider an algorithm approved by the National Institute of Standards and Technology.

(c) The executive commissioner by rule shall modify the advance directive forms required under this chapter as necessary to provide for the use of a digital or electronic signature that complies with the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0501, eff. April 2, 2015.

SUBCHAPTER B. DIRECTIVE TO PHYSICIANS

Sec. 166.031. DEFINITIONS. In this subchapter:

(1) "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

(2) "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 208, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.04, eff. Aug. 30, 1993. Renumbered from Sec. 672.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.032. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) Except as provided by Subsection (b-1), the declarant must sign the directive in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the directive.

(b-1) The declarant, in lieu of signing in the presence of witnesses, may sign the directive and have the signature acknowledged before a notary public.

(c) A declarant may include in a directive directions other than those provided by Section 166.033 and may designate in a directive a person to make a health care or treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.

(d) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is incompetent or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 1, eff. Jan. 1, 1998. Renumbered from Sec. 672.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 3, eff. September 1, 2015.

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

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

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

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

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

DIRECTIVE

I, _____, recognize that the best health care is based

upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

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

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

_____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

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

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

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

_____

_____

_____

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

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

1. _____

2. _____

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

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

Signed_____ Date_____ City, County, State of Residence _____

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

cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____ Witness 2 _____

Definitions:

"Artificially administered 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 gastrointestinal tract.

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

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

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

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

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"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 nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 2, eff. Jan. 1, 1998. Renumbered from Sec. 672.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 4, eff. September 1, 2015.

Sec. 166.034. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered in the medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.035. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

(1) the patient's spouse, if the spouse is an adult;

(2) the patient's parents; or

(3) the patient's legal guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.006 by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.036. NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED. (a) Except as provided by Section 166.032(b-1), a written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

(1) a directive be notarized; or

(2) a person use a form provided by the physician, health care facility, or health care professional.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 4, eff. September 1, 2009.

Sec. 166.037. PATIENT DESIRE SUPERSEDES DIRECTIVE. The desire of a qualified patient, including a qualified patient younger than 18 years of age, supersedes the effect of a directive.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.038. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when an adult qualified patient has executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from 672.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.039. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult qualified patient has not executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the patient.

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

(1) the patient's spouse;

(2) the patient's reasonably available adult children;

(3) the patient's parents; or

(4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if

known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician.

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment.

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Chapter 1251, Estates Code. The court may waive applicable fees in that proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 291, Sec. 3, eff. Jan. 1, 1998. Renumbered from Sec. 672.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0502, eff. April 2, 2015.

Sec. 166.040. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal or irreversible condition.

(b) Before withholding or withdrawing life-sustaining treatment from a qualified patient under this subchapter, the attending physician must determine that the steps proposed to be taken are in accord with this subchapter and the patient's existing desires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 6.01, eff. Nov. 12, 1991. Renumbered from Sec. 672.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.041. DURATION OF DIRECTIVE. A directive is effective until it is revoked as prescribed by Section 166.042. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.042. REVOCATION OF DIRECTIVE. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;

(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or

(3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and

place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.043. REEXECUTION OF DIRECTIVE. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032, including reexecution after the declarant is diagnosed as having a terminal or irreversible condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.044. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES. (a) A physician or health care facility that causes life-sustaining treatment to be withheld or withdrawn from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the physician or health care facility fails to exercise reasonable care when applying the patient's advance directive.

(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the health professional fails to exercise reasonable care when applying the patient's advance directive.

(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in

accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless the physician or health professional fails to exercise reasonable care when applying the patient's advance directive.

(d) The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.015 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING CERTAIN MEDICAL PROCEDURES. (a) A physician or a health care professional acting under the direction of a physician is not subject to civil liability for participating in a medical procedure performed under Section 166.046(d-2).

(b) A physician or a health care professional acting under the direction of a physician is not subject to criminal liability for participating in a medical procedure performed under Section 166.046(d-2) unless:

(1) the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to cause the death of the patient and that conduct significantly hastened the patient's death; and

(2) the hastening of the patient's death is not attributable to the risks associated with the medical procedure.

(c) A physician or a health care professional acting under the direction of a physician has not engaged in unprofessional conduct by participating in a medical procedure performed under Section 166.046(d-2) unless the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to harm the patient.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 1, eff. September 1, 2023.

Sec. 166.045. LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE. (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.

(c) 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, life-sustaining treatment shall be provided to the patient, 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.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING DIRECTIVE OR TREATMENT DECISION FOR CERTAIN PATIENTS. (a) This section applies only to health care and treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication.

(a-1) If an attending physician refuses to honor an advance directive of or health care or treatment decision made by or on behalf of a patient to whom this section applies, the physician's refusal shall be reviewed by an ethics or medical committee. The

attending physician may not be a member of that committee during the review. The patient shall be given life-sustaining treatment during the review.

(a-2) An ethics or medical committee that reviews a physician's refusal to honor an advance directive or health care or treatment decision under Subsection (a-1) shall consider the patient's well-being in conducting the review but may not make any judgment on the patient's quality of life. For purposes of this section, a decision by the committee based on any of the considerations described by Subdivisions (1) through (5) is not a judgment on the patient's quality of life. If the review requires the committee to determine whether life-sustaining treatment requested in the patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate, the committee shall consider whether provision of the life-sustaining treatment:

(1) will prolong the natural process of dying or hasten the patient's death;

(2) will result in substantial, irremediable, and objectively measurable physical pain that is not outweighed by the benefit of providing the treatment;

(3) is medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(4) is consistent with the prevailing standard of care; or

(5) is contrary to the patient's clearly documented desires.

(b) The person responsible for the patient's health care decisions:

(1) shall be informed in writing not less than seven calendar days before the meeting called to discuss the patient's directive, unless the period is waived by written mutual agreement, of:

(A) the ethics or medical committee review process and any other related policies and procedures adopted by

the health care facility, including any policy described by Subsection (b-1);

(B) the rights described in Subdivisions (3)(A)-(D);

(C) the date, time, and location of the meeting;

(D) the work contact information of the facility's personnel who, in the event of a disagreement, will be responsible for overseeing the reasonable effort to transfer the patient to another physician or facility willing to comply with the directive;

(E) the factors the committee is required to consider under Subsection (a-2); and

(F) the language in Section 166.0465;

(2) at the time of being informed under Subdivision (1), shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that 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; and

(3) is entitled to:

(A) attend and participate in the meeting as scheduled by the committee;

(B) receive during the meeting a written statement of the first name, first initial of the last name, and title of each committee member who will participate in the meeting;

(C) subject to Subsection (b-1):

(i) be accompanied at the meeting by the patient's spouse, parents, adult children, and not more than four additional individuals, including legal counsel, a physician, a health care professional, or a patient advocate, selected by the person responsible for the patient's health care decisions; and

(ii) have an opportunity during the open portion of the meeting to either directly or through another individual attending the meeting:

(a) explain the justification for the health care or treatment request made by or on behalf of the patient;

(b) respond to information relating to the patient that is submitted or presented during the open portion of the meeting; and

(c) state any concerns of the person responsible for the patient's health care decisions regarding compliance with this section or Section 166.0465, including stating an opinion that one or more of the patient's disabilities are not relevant to the committee's determination of whether the medical or surgical intervention is medically appropriate;

(D) receive a written notice of:

(i) the decision reached during the review process accompanied by an explanation of the decision, including, if applicable, the committee's reasoning for affirming that requested life-sustaining treatment is medically inappropriate;

(ii) the patient's major medical conditions as identified by the committee, including any disability of the patient considered by the committee in reaching the decision, except the notice is not required to specify whether any medical condition qualifies as a disability;

(iii) a statement that the committee has complied with Subsection (a-2) and Section 166.0465; and

(iv) the health care facilities contacted before the meeting as part of the transfer efforts under Subsection (d) and, for each listed facility that denied the request to transfer the patient and provided a reason for the denial, the provided reason;

(E) receive a copy of or electronic access to the portion of the patient's medical record related to the treatment received by the patient in the facility for the period of the patient's current admission to the facility; and

(F) receive a copy of or electronic access to all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (E).

(b-1) A health care facility may adopt and implement a

written policy for meetings held under this section that is reasonable and necessary to:

(1) facilitate information sharing and discussion of the patient's medical status and treatment requirements, including provisions related to attendance, confidentiality, and timing regarding any agenda item; and

(2) preserve the effectiveness of the meeting, including provisions disclosing that the meeting is not a legal proceeding and the committee will enter into an executive session for deliberations.

(b-2) Notwithstanding Subsection (b)(3), the following individuals may not attend or participate in the executive session of an ethics or medical committee under this section:

(1) the physicians or health care professionals providing health care and treatment to the patient; or

(2) the person responsible for the patient's health care decisions or any person attending the meeting under Subsection (b)(3)(C)(i).

(b-3) If the health care facility or person responsible for the patient's health care decisions intends to have legal counsel attend the meeting of the ethics or medical committee, the facility or person, as applicable, shall make a good faith effort to provide written notice of that intention not less than 48 hours before the meeting begins.

(c) The written notice required by Subsection (b)(3)(D)(i) must be included in the patient's medical record.

(d) After written notice is provided under Subsection (b)(1), the patient's attending physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. The health care facility's personnel shall assist the physician in arranging the patient's transfer to:

(1) another physician;

(2) an alternative care setting within that facility; or

(3) another facility.

(d-1) If another health care facility denies the patient's transfer request, the personnel of the health care facility

assisting with the patient's transfer efforts under Subsection (d) shall make a good faith effort to inquire whether the facility that denied the patient's transfer request would be more likely to approve the transfer request if a medical procedure, as that term is defined in this section, is performed on the patient.

(d-2) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate:

(1) the attending physician or another physician responsible for the care of the patient shall perform on the patient each medical procedure that satisfies all of the following conditions:

(A) in the attending physician's judgment, the medical procedure is reasonable and necessary to help effect the patient's transfer under Subsection (d);

(B) an authorized representative for another health care facility with the ability to comply with the patient's advance directive or the health care or treatment decision made by or on behalf of the patient has expressed to the personnel described by Subsection (b)(1)(D) or the attending physician that the facility is more likely to accept the patient's transfer to the other facility if the medical procedure is performed on the patient;

(C) in the medical judgment of the physician who would perform the medical procedure, performing the medical procedure is:

(i) within the prevailing standard of medical care; and

(ii) not medically contraindicated or medically inappropriate under the circumstances;

(D) in the medical judgment of the physician who would perform the medical procedure, the physician has the training and experience to perform the medical procedure;

(E) the physician who would perform the medical procedure has medical privileges at the facility where the patient

is receiving care authorizing the physician to perform the medical procedure at the facility;

(F) the facility where the patient is receiving care has determined the facility has the resources for the performance of the medical procedure at the facility; and

(G) the person responsible for the patient's health care decisions provides consent on behalf of the patient for the medical procedure; and

(2) the person responsible for the patient's health care decisions is entitled to receive:

(A) a delay notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions provides to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent;

(B) a start notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), no medical procedure satisfies all of the conditions described by Subdivisions (1)(A) through (F); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions does not provide to the attending

physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent; and

(C) a start notice accompanied by a statement that one or more of the conditions described by Subdivisions (1)(A) through (G) are no longer satisfied if, after a delay notice is provided in accordance with Subdivision (2)(A) and before the medical procedure on which the delay notice is based is performed on the patient, one or more of those conditions are no longer satisfied.

(d-3) After the 25-day period described by Subsection (e) begins, the period may not be suspended or stopped for any reason. This subsection does not limit or affect a court's ability to order an extension of the period in accordance with Subsection (g). Subsection (d-2) does not require a medical procedure to be performed on the patient after the expiration of the 25-day period.

(e) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical interventions necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred in transferring the patient to another health care facility. 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 25th calendar day after a start notice is provided in accordance with Subsection (d-2)(2)(B) or (C) to the person responsible for the patient's health care decisions or a medical procedure for which a delay notice was provided in accordance with Subsection (d-2)(2)(A) is performed, whichever occurs first, unless ordered to extend the 25-day period under Subsection (g),

except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

(1) hasten the patient's death;

(2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(3) result in substantial, irremediable, and objectively measurable physical pain not outweighed by the benefit of providing the treatment;

(4) be medically ineffective in prolonging life; or

(5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the person responsible for the patient's health care decisions, the appropriate district or county court shall extend the period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

(i) In this section:

(1) "Delay notice" means a written notice that the first day of the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will be delayed until the calendar day after a medical procedure required by Subsection (d-2)(1) is performed unless, before the medical procedure is performed, the person receives written notice of an earlier first day because one or more conditions described by that subdivision are no longer satisfied.

(2) "Medical procedure" means only a tracheostomy or a percutaneous endoscopic gastrostomy.

(3) "Start notice" means a written notice that the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will begin on the first calendar day after the date the notice is provided.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 3, 4, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0503, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 5, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 3, eff. September 1, 2023.

Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED TO PATIENT DISABILITY. (a) In this section, "disability" has the meaning assigned by the Americans with Disabilities Act of 1990 in 42 U.S.C. Section 12102.

(b) During the review process under Section 166.046(b), the ethics or medical committee may not consider a patient's disability that existed before the patient's current admission unless the disability is relevant in determining whether the medical or surgical intervention is medically appropriate.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 4, eff. September 1, 2023.

Sec. 166.047. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.048. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining treatment to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining treatment to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.018 and amended by Acts 1999, 76th Leg.,

ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.050. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter 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 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (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 for a patient who is determined to be incompetent or is otherwise mentally or

physically incapable of communication, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish To Continue

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be provided to the patient, which the attending physician believes is not medically appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication because of the physician's judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days, if possible.

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

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

1. The physician, with the help of the health care facility,

will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until the patient can be transferred to a willing provider for up to 25 calendar days from the time you were given a written notice of the first day of the 25-day period or a medical procedure is performed that delayed the 25-day period and for which you received notice, whichever occurs first. The patient will continue to be given after the 25-day period treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment, result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment, be medically ineffective in prolonging life, or be contrary to the patient's or surrogate's clearly documented desires.

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

5. If a provider cannot be found willing to give the requested treatment within 25 calendar days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 25-day period if the court finds that there is a reasonable expectation that you may find a physician or health care

facility willing to provide life-sustaining treatment if the extension is granted. Patient medical records will be provided to the patient or surrogate in accordance with Section 241.154, Texas Health and Safety Code.

*"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 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.

(b) In cases in which the attending physician refuses to comply with an advance directive or a health care or treatment decision requesting the withholding or withdrawal of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

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

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be withdrawn or withheld from the patient, and the attending physician disagrees with and refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of

life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days, if possible.

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

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

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

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

*"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 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.

(c) An attending physician or health care facility may, if

it chooses, include any additional information concerning the physician's or facility's policy, perspective, experience, or review procedure.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0504, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 6, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 5, eff. September 1, 2023.

Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The department shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the department they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to accept transfer of or provide services to any particular patient.

(c) The department shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;

(2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Department of State Health Services their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Department of State Health Services nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0505, eff. April 2, 2015.

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day after the date written notice is provided under Section 166.046(b)(1), a health care facility shall prepare and submit to the commission a report that contains the following information:

(1) the number of days that elapsed from the patient's admission to the facility to the date notice was provided under Section 166.046(b)(1);

(2) whether the ethics or medical committee met to review the case under Section 166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under Section 166.046(b)(1) to the date the meeting was held;

(3) whether the patient was:

(A) transferred to a physician within the same facility who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of the patient;

(B) transferred to a different health care facility; or

(C) discharged from the facility to a private residence or other setting that is not a health care facility;

(4) whether the patient died while receiving life-sustaining treatment at the facility;

(5) whether life-sustaining treatment was withheld or

withdrawn from the patient at the facility after expiration of the time period described by Section 166.046(e) and, if so, the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the facility, as selected from the following categories:

(A) the patient died at the facility;

(B) the patient is currently a patient at the facility;

(C) the patient was transferred to a different health care facility; or

(D) the patient was discharged from the facility to a private residence or other setting that is not a health care facility;

(6) the age group of the patient selected from the following categories:

(A) 17 years of age or younger;

(B) 18 years of age or older and younger than 66 years of age; or

(C) 66 years of age or older;

(7) the health insurance coverage status of the patient selected from the following categories:

(A) private health insurance coverage;

(B) public health plan coverage; or

(C) uninsured;

(8) the patient's sex;

(9) the patient's race;

(10) whether the facility was notified of and able to reasonably verify any public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(11) whether the facility was notified of and able to reasonably verify any public disclosure by facility personnel of the contact information for the patient's immediate family members or the person responsible for the patient's health care decisions in connection with the patient's stay at the facility.

(b) The commission shall ensure information provided in each report submitted by a health care facility under Subsection (a) is kept confidential and not disclosed in any manner, except as provided by this section.

(c) Not later than April 1 of each year, the commission shall prepare and publish on the commission's Internet website a report that contains:

(1) aggregate information compiled from the reports submitted to the commission under Subsection (a) during the preceding year on:

(A) the total number of written notices provided under Section 166.046(b)(1);

(B) the average number of days described by Subsection (a)(1);

(C) the total number of meetings held by ethics or medical committees to review cases under Section 166.046;

(D) the average number of days described by Subsection (a)(2);

(E) the total number of patients described by Subsections (a)(3)(A), (B), and (C);

(F) the total number of patients described by Subsection (a)(4);

(G) the total number of patients for whom life-sustaining treatment was withheld or withdrawn after expiration of the time period described by Section 166.046(e);

(H) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(I) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure by facility personnel of contact information for the patient's immediate family members or person responsible for the patient's health care decisions in connection with the patient's stay at the facility; and

(2) if the total number of reports submitted under Subsection (a) for the preceding year is 10 or more, aggregate information compiled from those reports on the total number of patients categorized by:

(A) sex;

(B) race;

(C) age group, based on the categories described by Subsection (a)(6);

(D) health insurance coverage status, based on the categories described by Subsection (a)(7); and

(E) for patients for whom life-sustaining treatment was withheld or withdrawn at the facility after expiration of the period described by Section 166.046(e), the total number of patients described by each of the following:

(i) Subsection (a)(5)(A);

(ii) Subsection (a)(5)(B);

(iii) Subsection (a)(5)(C); and

(iv) Subsection (a)(5)(D).

(d) If the commission receives fewer than 10 reports under Subsection (a) for inclusion in an annual report required under Subsection (c), the commission shall include in the next annual report prepared after the commission receives 10 or more reports the aggregate information for all years for which the information was not included in a preceding annual report. The commission shall include in the next annual report a statement that identifies each year during which an underlying report was submitted to the commission under Subsection (a).

(e) The annual report required by Subsection (c) or (d) may not include any information that could be used alone or in combination with other reasonably available information to identify any individual, entity, or facility.

(f) The executive commissioner shall adopt rules to:

(1) establish a standard form for the reporting requirements of this section; and

(2) protect and aggregate any information the commission receives under this section.

(g) Information collected as required by this section or

submitted to the commission under this section:

(1) 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;

(2) may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional acting under the direction of a physician, or health care facility; and

(3) is not public information or subject to disclosure under Chapter 552, Government Code, except as permitted by Section 552.008, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 6, eff. September 1, 2023.

SUBCHAPTER C. OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

Sec. 166.081. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2003, 78th Leg., ch. 1228, Sec. 8.

(2) "DNR identification device" means an identification device specified by department rule under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.

(3) "Emergency medical services" has the meaning assigned by Section 773.003.

(4) "Emergency medical services personnel" has the meaning assigned by Section 773.003.

(5) "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by department rule under Section 166.083, prepared and signed by the attending

physician of a person, that documents the instructions of a person or the person's legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

(ii) advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) other life-sustaining treatment specified by department rule under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(7) "Out-of-hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.

(8) "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.

(9) "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is incompetent or otherwise mentally or physically incapable of communication under Section 166.088.

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the executive commissioner under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch.

1228, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0506, eff. April 2, 2015.

Sec. 166.082. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. (a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule.

(b) Except as provided by this subsection, the declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record. The declarant, in lieu of signing in the presence of witnesses, may sign the out-of-hospital DNR order and have the signature acknowledged before a notary public.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b) and may use a digital or electronic signature authorized under Section 166.011.

(d) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(e) If the person is now incompetent but previously executed or issued a medical power of attorney designating an agent, the

agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(f) The executive commissioner, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) An out-of-hospital DNR order is effective on its execution.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0507, eff. April 2, 2015.

Sec. 166.083. FORM OF OUT-OF-HOSPITAL DNR ORDER. (a) A written out-of-hospital DNR order shall be in the standard form specified by department rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by department rule must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the

person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the

document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the executive commissioner determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The executive commissioner may, by rule and as recommended by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0508, eff. April 2, 2015.

Sec. 166.084. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The attending physician and witnesses shall sign the

out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(7) and the attending physician shall sign the document in the place required by Section 166.083(b)(13). The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. (a) The following persons may execute an out-of-hospital DNR order on behalf of a minor:

(1) the minor's parents;

(2) the minor's legal guardian; or

(3) the minor's managing conservator.

(b) A person listed under Subsection (a) may not execute an out-of-hospital DNR order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.005 by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 6, eff. June 20, 2003.

Sec. 166.086. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.006 and amended by Acts 1999, 76th Leg.,

ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's present desire.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the attending physician and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by department rule.

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

(g) A person listed in Section 166.039(b) who wishes to challenge a decision made under this section must apply for temporary guardianship under Chapter 1251, Estates Code. The court may waive applicable fees in that proceeding.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0509, eff. April 2, 2015.

Sec. 166.089. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090.

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature or digital or electronic signature of the declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals 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.

(f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 7, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0510, eff. April 2, 2015.

Sec. 166.090. DNR IDENTIFICATION DEVICE. (a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by department rule adopted under Section 166.101.

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0511, eff. April 2, 2015.

Sec. 166.091. DURATION OF OUT-OF-HOSPITAL DNR ORDER. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section 166.092.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.092. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any;

(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;

(3) the declarant communicating the declarant's intent to revoke the order; or

(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the executive commissioner and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16 1995. Renumbered from Sec. 674.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0512, eff. April 2, 2015.

Sec. 166.093. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. A declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section 166.082, including reexecution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0513,

eff. April 2, 2015.

Sec. 166.095. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0514, eff. April 2, 2015.

Sec. 166.097. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule to be withheld from the other person with the result that the other person's death is hastened.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0515, eff. April 2, 2015.

Sec. 166.098. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule under this subchapter from a person known by the responding health care professionals to be pregnant.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0516, eff. April 2, 2015.

Sec. 166.099. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.
Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule.
Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.022 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0517, eff. April 2, 2015.

Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER. (a) The executive commissioner shall, on the recommendation of the department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is

encountered by responding health care professionals.

(b) The rules adopted under Subsection (a) are not effective until approved by the Texas Medical Board.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the executive commissioner.

(d) The executive commissioner by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the executive commissioner from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the executive commissioner for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.023 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0517, eff. April 2, 2015.

Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL. (a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.

(b) When responding to a call for assistance, emergency

medical services personnel:

(1) shall honor only a properly executed or issued out-of-hospital DNR order or prescribed DNR identification device in accordance with this subchapter; and

(2) have no duty to review, examine, interpret, or honor a person's other written directive, including a written directive in the form prescribed by Section 166.033.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 7, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 1, eff. June 17, 2011.

SUBCHAPTER D. MEDICAL POWER OF ATTORNEY

Sec. 166.151. DEFINITIONS. In this subchapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.

(3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.

(4) "Principal" means an adult who has executed a medical power of attorney.

(5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.152. SCOPE AND DURATION OF AUTHORITY. (a) Subject

to this subchapter or any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.

(c) Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

(1) a medical power of attorney is in effect; or

(2) the principal is competent.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this subchapter, an agent may not consent to:

(1) voluntary inpatient mental health services;

(2) convulsive treatment;

(3) psychosurgery;

(4) abortion; or

(5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this subchapter and delivery of the document to the agent, unless it is revoked as provided by this subchapter or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked as provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.153. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

(1) the principal's health care provider;

(2) an employee of the principal's health care provider unless the person is a relative of the principal;

(3) the principal's residential care provider; or

(4) an employee of the principal's residential care provider unless the person is a relative of the principal.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.003 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.154. EXECUTION. (a) Except as provided by Subsection (b), the medical power of attorney must be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.

(b) The principal, in lieu of signing in the presence of the witnesses, may sign the medical power of attorney and have the signature acknowledged before a notary public.

(c) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's

name in the principal's presence and at the principal's express direction. The person may use a digital or electronic signature authorized under Section 166.011.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 8, eff. September 1, 2009.

Sec. 166.155. REVOCATION; EFFECT OF TERMINATION OF MARRIAGE. (a) A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state; or

(2) execution by the principal of a subsequent medical power of attorney.

(a-1) An agent's authority under a medical power of attorney is revoked if the agent's marriage to the principal is dissolved, annulled, or declared void unless the medical power of attorney provides otherwise.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 1, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 2, eff. January 1, 2018.

Sec. 166.156. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the medical power of attorney.

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.157. DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the medical power of attorney, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26,

1991. Renumbered from Civil Practice & Remedies Code Sec. 135.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.158. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical power of attorney shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter, and the medical power of attorney.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections 166.045 and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.159. DISCRIMINATION RELATING TO EXECUTION OF MEDICAL POWER OF ATTORNEY. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a medical power of attorney;

(2) require a person to execute a medical power of attorney before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical power of attorney. Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.160. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical power of attorney and the provisions of this subchapter.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical power of attorney, the directives of the agent, and the provisions of this subchapter; and

(2) does not constitute a failure to exercise reasonable care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or similar community.

(d) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a medical power of attorney if the physician, provider, or person was not provided with a copy of the medical power of attorney or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the medical power of attorney has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.161. LIABILITY FOR HEALTH CARE COSTS. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.011 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name:_____

Address:_____

Phone_____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by

my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:_____

_____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved, annulled, or declared void unless this document provides otherwise.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name:_____

Address:_____

Phone _____

B. Second Alternate Agent

Name:_____

Address:_____

Phone _____

The original of this document is kept at:

_____

_____

_____

The following individuals or institutions have signed copies:

Name:_____

Address:_____

_____

Name:_____

Address:_____

_____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

DISCLOSURE STATEMENT.

THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are unable to make the decisions for yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority is effective when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have if you were able to make health care decisions for yourself.

It is important that you discuss this document with your physician or other health care provider before you sign the document to ensure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing facility, or residential care facility, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not allow a person to serve as both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate agent, the alternate agent has the same authority as the agent to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

(1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR

(2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent;

(2) a person related to you by blood or marriage;

(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;

(4) your attending physician;

(5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

By signing below, I acknowledge that I have read and understand the information contained in the above disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature:_____

Print Name:_____ Date:_____

Address:_____

SIGNATURE OF SECOND WITNESS.

Signature:_____

Print Name:_____ Date:_____

Address:_____

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 1, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 3, eff. January 1, 2018.

Sec. 166.165. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

(1) was not competent; or

(2) was under duress, fraud, or undue influence.

(a-1) In a county in which there is no statutory probate court, an action under this section shall be brought in the district court. In a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent jurisdiction over an action brought under this section.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the court orders otherwise.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept.

1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 2, eff. September 1, 2013.

Sec. 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, 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 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.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. DEFINITION. In this subchapter, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.202. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a DNR order issued in a health care facility or hospital.

(b) This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1,

eff. April 1, 2018.

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) A DNR order issued for a patient is valid only if the order is dated and:

(1) is issued by a physician providing direct care to the patient in compliance with:

(A) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, 166.035, 166.082, 166.084, or 166.085;

(D) the directions of a patient's:

(i) legal guardian;

(ii) agent under a medical power of attorney acting in accordance with Subchapter D; or

(iii) proxy as designated and authorized by a directive executed in accordance with Subchapter B to make a treatment decision for the patient if the patient becomes incompetent or otherwise mentally or physically incapable of communication; or

(E) a treatment decision made in accordance with Section 166.039;

(2) is issued by the patient's attending physician and:

(A) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions; and

(B) in the reasonable medical judgment of the patient's attending physician:

(i) the patient's death is imminent, within minutes to hours, regardless of the provision of cardiopulmonary resuscitation; and

(ii) the DNR order is medically appropriate; or

(3) is issued by the patient's attending physician:

(A) for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) in compliance with a decision:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(b) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable and may be issued and entered in a format acceptable under the policies of the health care facility or hospital.

(c) Unless notice is provided in accordance with Section 166.204(a), before placing in a patient's medical record a DNR order issued under Subsection (a)(2), a physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:

(1) inform the patient of the order's issuance; or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A) the patient's known agent under a medical power of attorney or legal guardian; or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the treatment decision made in compliance with this subchapter, advance directive validly executed or issued as described by this subchapter, or DNR order

dated and validly executed or issued in compliance with this subchapter later in time controls.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 7, eff. September 1, 2023.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) 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, the physician, physician assistant, or nurse who has actual knowledge of the order shall, unless notice has been provided in accordance with Section 166.203(c), disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(a-1) For a patient who was incompetent at the time notice otherwise would have been provided to the patient under Section 166.203(c)(1) and if a physician providing direct care to the patient later determines that, based on the physician's reasonable medical judgment, the patient has become competent, a physician, physician assistant, or nurse providing direct care to the patient shall disclose the order to the patient, provided that the physician, physician assistant, or nurse has actual knowledge:

(1) of the order; and

(2) that a physician providing direct care to the patient has determined that the patient has become competent.

(b) Failure to comply with Subsection (a) or (a-1) or Section 166.203(c) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital, is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) or (a-1) of this section or Section 166.203(c) if the person:

(1) makes a good faith effort to comply with Subsection (a) or (a-1) or Section 166.203(c) and contemporaneously records in the patient's medical record the person's effort to comply with those provisions; or

(2) makes a good faith determination that the circumstances that would require the person to perform an act under Subsection (a) or (a-1) or Section 166.203(c) are not met.

(d) A physician, physician assistant, or nurse may satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b). The physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(e) On admission to a health care facility or hospital, the facility or hospital shall provide to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 8, eff. September 1, 2023.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY. (a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if:

(1) an advance directive that serves as the basis of

the DNR order is properly revoked in accordance with this chapter;

(2) the patient 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); or

(3) the DNR order was issued under Section 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person responsible for the patient's health care decisions expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke the DNR order.

(b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order or of the revocation of an advance directive under Subsection (a).

(c) A patient's attending physician may at any time revoke a DNR order issued under:

(1) Section 166.203(a)(1)(A), (B), or (C), provided that:

(A) the order is for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) the decision to revoke the order is:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient;

(2) Section 166.203(a)(1)(E), provided that the order's issuance was based on a treatment decision made in accordance with Section 166.039(e);

(3) Section 166.203(a)(2); or

(4) Section 166.203(a)(3).

(c-1) A patient's attending physician shall revoke a DNR order issued for the patient under Section 166.203(a)(2) if, in the attending physician's reasonable medical judgment, the condition described by Section 166.203(a)(2)(B)(i) is no longer satisfied.

(d) Except as otherwise provided by this subchapter, a

person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 9, eff. September 1, 2023.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) If a 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, the physician, facility, or hospital shall 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) If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

(c) The procedures required by this section may not be construed to control or supersede Section 166.203(a).

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 10, eff. September 1, 2023.

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY RESUSCITATION. A physician, health care professional, health care facility, hospital, or entity that

in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER. A physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.209. ENFORCEMENT. (a) Subject to Sections 166.205(d), 166.207, and 166.208 and Subsection (c), a physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate this subchapter, the person intentionally:

(1) conceals, cancels, effectuates, or falsifies another person's DNR order in violation of this subchapter; or

(2) conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter.

(a-1) An offense under Subsection (a) is a Class A misdemeanor. This section does not preclude prosecution for any other applicable offense.

(b) Subject to Sections 166.205(d), 166.207, and 166.208, 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:

(1) failing to effectuate a DNR order in violation of

this subchapter; or

(2) issuing a DNR order in violation of this subchapter.

(c) Subsection (a) does not apply to a person whose act or omission was based on a reasonable belief that the act or omission was in compliance with the wishes of the patient or the person responsible for the patient's health care decisions.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 11, eff. September 1, 2023.