Procedure if Not Effectuating a Directive or Treatment Decision
§ 166.046. (a) If an attending physician refuses to honor a patient's advance directive or a health care or treatment decision made by or on behalf of a patient, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee. The patient shall be given life-sustaining treatment during the review.
(b) The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision:
(1) may be given a written description of the ethics or medical committee review process and any other policies and procedures related to this section adopted by the health care facility;
(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;
(3) at the time of so being informed, 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 the location a provider willing to accept transfer that is posted on the website maintained by the Texas health Care Information Council under Section 166.053; and
(4) is entitled to:
(A) attend the meeting; and
(B) receive a written explanation of the decision reached during the review process.
(c) The written explanation required by Subsection (b)(2)(B) must be included in the patient's medical record.
(d) If the attending physician, the patient, or the person responsible for the health care decisions of the individual does not agree with the decision reached during the review process under Subsection (b), the physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive.
If the patient is a patient in a health care facility, the 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.
(e) If the patient or the person responsible for the health care decision of the patient is requesting life-sustaining treatment that the attending physician has decided and the review process has affirmed is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). The patient is responsible for any costs incurred in transferring the patient to another facility. The physician and the health care facility are not obligated to provide life-sustaining treatment after the 10th day after the written decision required under Subsection (b) is provided to the patient or the person responsible for the health care decisions of the patient unless ordered to do so under Subsection (g).
(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 patient or the person responsible for the health care decisions of the patient, the
appropriate district or county court shall extend the time 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.

**Statements Explaining Patient's Right to Transfer**

Sec. 166.052. (a) In cases in which the attending physician refuses to honor an advance directive or treatment decision requesting the provision of life-sustaining treatment, 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 Life-Sustaining Treatment That You Wish To Continue**

You have been given this information because you have requested life-sustaining treatment,* which the attending physician believes is not 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 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be 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 48 hours 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 48 hours, 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 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 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 Texas Health Care Information Council. You may wish to contact providers 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 he or she can be transferred to a willing provider for up to 10 days from the time you were given the committee's written decision that life-sustaining treatment is not appropriate.
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 10 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 10-day period if the court finds that there is a reasonable expectation that a physician or health care facility willing to provide life-sustaining treatment will be found if the extension is granted.

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

(b) In cases in which the attending physician refuses to comply with an advance directive or treatment decision requesting the withholding or withdrawal of life-sustaining treatment, the statement required by Section 166.046(b)(3)(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 you have requested the withdrawal or withholding of life-sustaining treatment* and the attending physician 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 of the 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 48 hours 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 48 hours, 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 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 Texas Health Care Information Council. You may wish to contact providers 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 artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(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.

Registry to Assist Transfers
Sec. 166.053. (a) The Texas Health Care Information Council 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 council 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 Texas Health Care Information Council 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 and shall provide a clearly identifiable link from its home page to the registry page. 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 Texas Health Care Information Council their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Texas Health Care Information Council nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

Limitation on Liability for Withholding Cardiopulmonary Resuscitation and Certain Other Life-Sustaining Procedures

§ 166.094. (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 the board 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 the board 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 the board 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 the board 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.

Providing Notice of Policies...

(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.

SURROGATE APPOINTMENT IF NO ADVANCE DIRECTIVE
Procedure When Person Has Not Executed or Issued a Directive and is Incompetent or Incapable of Communication
§ 166.039. (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 Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

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

(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.