Department of State Health Services
Council Agenda Memo for State Health Services Council
February 23, 2012

Agenda Item Title: Repeal of rules concerning life-sustaining treatment in state hospitals

Agenda Number: 4.i

Recommended Council Action:

_____ For Discussion Only

__X__ For Discussion and Action by the Council

Background:

The life-sustaining treatment rules apply to the State Hospitals Section within the Mental Health and Substance Abuse Services Division. The state hospitals have a bed capacity of 2,477 and provide voluntary, civil, and forensic mental health services. There were 16,290 unique admissions during FY 2010 and 16,029 during FY 2011 and 31 state hospital patients died during FY 2009-10 biennium. For most medical services, patients are transferred from the state hospitals to a community hospital to receive care. However, the state hospitals do some medical services and query patients concerning their preferred advanced directives.

Summary:

The purpose of the repeal is to remove the rules in DSHS's rule base in order to allow state hospitals to better adhere to the current requirements of Health and Safety Code (HSC), Chapter 166. The rules are no longer necessary because statutes and policies address the requirements in these rules.

The rules in Chapter 405, Subchapter C address the resuscitative treatment of patients and apply only to patients who receive care in the state hospitals. Subchapter C addresses the Resuscitative Status Policy, the Natural Death Act, Out-of-Hospital Do-Not-Resuscitate (DNR) Orders, and Durable Power of Attorney for Health Care. In 1999, the 76th Texas Legislature passed the Advance Directives Act with the aim of making consistent the state's various laws dealing with advance directives. This law re-codified the existing forms of advance directives into HSC, Chapter 166.

Currently, the state hospitals follow HSC, Chapter 166, which includes specific direction about directives to physicians, out-of-hospital DNR orders, and medical power of attorney. HSC, Chapter 166 creates standardized forms for the directive to physicians and the medical power of attorney. It also directs DSHS to create a standardized out-of-hospital DNR form, which is used by all out-of-hospital settings in Texas. The form is available at www.dshs.state.tx.us/emstraumasystems/DNR_Form.pdf and applies to the state hospitals.

The repeal of the rules does not pose a significant fiscal impact to DSHS and there is no fiscal impact of the rules to state hospitals.

Key Health Measures:

The State Hospitals Section currently tracks how many individuals have advanced directives and will continue to do so following repeal of these rules. The rule change is not expected to change the number of individuals that have advanced directives; however, it is expected to increase compliance with the law and standardize implementation of HSC, Chapter 166.

The State Hospitals Section will create a single uniform policy guideline to direct all of the state hospitals as to how to implement HSC, Chapter 166. The use of a uniform policy guideline will also allow the state hospitals to better keep pace with changes in medical practice. As the State Hospitals Section works to develop the policy guidelines, the policy will include direction to the state hospitals about the circumstances during which a patient is informed of advanced directives options. To monitor for compliance, the state hospitals will make completion of the advanced directives fields a mandatory part of the electronic medical record.

Summary of Input from Stakeholder Groups:

Two stakeholder meetings were held (May 13, 2010 and July 15, 2010) to discuss the possible changes for the rules with representation from the Texas Medical Association; Texas Osteopathic Medical Association; Texas Society of Psychiatric Physicians; Texas Nurses Association; Coalition for Nurses in Advanced Practice; Mental Health Planning and Advisory Council; Advocacy, Inc; Texas Partnership for End of Life Care; Texas Catholic Conference; and Texas Alliance for Life. Stakeholders have also been contacted via email to solicit suggested changes to the rules. ~~Texas Right to Life has also been contacted in regards to these rules and they suggested no changes.~~* These groups were involved in the original discussion of HSC, Chapter 166.

Repeal of the subchapter has been discussed with the state hospitals and they were supportive of the repeal and expressed a desire to have a consistent statutory standard to follow.

There is no expected controversy or objection to the repeal of the rules.

** This sentence was erroneously included in the original version of this document as posted for the February 22-23, 2012 meeting and provided to the State Health Services Council members.*

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item **#4.i**

Approved by Assistant Commissioner/Director:	/s/maples			**Date:**	1/20/2012
Presenter:	Emilie Becker	**Program:**	Mental Health and Substance Abuse	**Phone No.:**	512-206-5936
Approved by CCEA:	Carolyn Bivens			**Date:**	1/20/2012

TITLE 25. HEALTH SERVICES
Part 1. Department Of State Health Services
Chapter 405. Patient Care - Mental Health Services
Subchapter C. Life-Sustaining Treatment
Repeals §§405.51 - 405.63

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §§405.51 - 405.63 concerning life-sustaining treatment in state hospitals.

BACKGROUND AND PURPOSE

These rules address the Resuscitative Status Policy, the Natural Death Act, Out-of-Hospital Do-Not-Resuscitate Orders, and a Durable Power of Attorney for Health Care for patients in state hospitals. The rules were formerly under the Department of Mental Health and Mental Retardation and were transferred and consolidated with the department on September 1, 2004. The rules are no longer necessary because the requirements for resuscitative treatment of patients are covered sufficiently and comprehensively in Health and Safety Code, Chapter 166, other rules, and policies. Health and Safety Code, Chapter 166, includes specific directions about directives to physicians, Out-of-Hospital Do-Not-Resuscitate Orders, and a medical power of attorney.

The repeal is necessary to better conform advanced directives in state hospitals (Austin State Hospital, Big Spring State Hospital, El Paso Psychiatric Center, Kerrville State Hospital, North Texas State Hospital, Rusk State Hospital, San Antonio State Hospital, Terrell State Hospital, Rio Grande State Center, and Waco Center for Youth) to state law.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 405.51 - 405.63 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because rules are no longer needed.

SECTION-BY-SECTION SUMMARY

The repeal of §§405.51 - 405.63 will eliminate unnecessary rules and bring the department into compliance with state law.

FISCAL NOTE

Michael Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the repeals are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed for repeal.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the sections as proposed for repeal. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the repealed sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed for repeal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Maples has determined that for each year of the first five years the sections are in effect the public will benefit as a result of the repeal of these rules because unnecessary rules will be eliminated while maintaining continued protection of the public health, welfare, and safety in keeping with currently accepted medical practices.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Nnenna Ezekoye, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code 2053, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5268, or by email to Nnenna.Ezekoye@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, Chapter 166, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to life sustaining treatment and advanced directives; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The repeals affect the Health and Safety Code, Chapters 166 and 1001; and Government Code, Chapter 531.

Sections for repeal.

§405.51. Purpose.
§405.52. Application.
§405.53. Definitions.
§405.54. Resuscitative Status Policy.
§405.55. Determination and Implementation of Resuscitative Status Order.
§405.56. General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Natural Death Act.
§405.57. Legal Expression through Directive under the Natural Death Act
§405.58. Legal Expression through Directive under a Durable Power of Attorney for Health Care.
§405.59. Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives.
§405.60. Ethics Committee.
§405.61. Exhibits.
§405.62. References.
§405.63. Distribution.

Proposed Repealed Language
~~Strikethrough~~=repealed text

~~Subchapter C. Life-Sustaining Treatment~~

~~§405.51. Purpose.~~

~~The purpose of this subchapter is to provide procedures for~~:

~~(1) delineating the treatment and resuscitative status of individuals;~~
~~(2) implementing the Natural Death Act, Texas Health and Safety Code, Chapter 672, which provides statutory authority for decision-making with regard to withholding or withdrawal of life-sustaining treatment; and~~
~~(3) implementing a durable power of attorney for health care, as outlined in the Civil Practice and Remedies Code, Chapter 135, which provides for the designation of an agent with the authority to make health care decisions.~~

~~§405.52. Application.~~

~~This subchapter applies to all campus-based residential facilities of the Texas Department of Mental Health and Mental Retardation.~~

~~§405.53. Definitions.~~

~~The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.~~
~~(1) Competent--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 any proposed treatment decision.~~
~~(2) Consulting--The descriptor for persons not employed by the Texas Department of Mental Health and Mental Retardation who serve on an ethics committee on a voluntary basis, i.e., without monetary or other tangible compensation.~~
~~(3) Directive--Written or oral expression by a competent adult of his or her desires regarding life-sustaining treatment in the event of an occurrence of a terminal condition as certified by two physicians, one of whom is the attending physician, which meets the legal requirements of the Natural Death Act. Types of advance directives include the "Directive to Physicians/Living Will" and the "Durable Power of Attorney for Health Care Decisions."~~
~~(4) Ethics committee--An advisory committee of facility staff, consulting professionals, and advocates, whose purpose is to provide advice and consultation to physicians, parents, guardians, and family members regarding treatment decisions concerning individuals who may have a qualifying condition.~~
~~(5) Facility--Any state hospital, state school for persons with mental retardation, state center, or other institution of the Texas Department of Mental Health and Mental Retardation, and any organizational entity that hereafter may be made a part of the department.~~
~~(6) Family--The spouse, reasonably available adult children, parent(s), sibling(s), or nearest relative of the individual, in that priority.~~

~~(7) Incompetent--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 any proposed treatment decision.~~

~~(8) Individual--A person receiving campus-based residential services from a residential facility of the Texas Department of Mental Health and Mental Retardation.~~

~~(9) Legal guardian--The person who, under court order, is the guardian of the person of the individual.~~

~~(10) Life-sustaining treatment--A medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function.~~

~~(11) Qualifying condition--A terminal condition that has been certified by the attending physician and one other physician who has personally examined the individual.~~

~~(12) Residential facility--All state hospitals, state schools, and state centers providing 24-hour campus-based residential services to persons with mental retardation or mental illness.~~

~~(13) Resuscitation--Act of reviving from apparent death or unconsciousness.~~

~~(14) Resuscitative status categories--Categories of intervention for individuals, as follows:~~

~~(A) Category I: Maximum therapeutic effort--Intervention in which everything reasonably necessary will be done to reduce mortality and morbidity (illness), including transfer to a medical facility for additional services;~~

~~(B) Category II: Therapeutic effort with no heroics--Intervention in which conservative therapeutic and supportive measures will be performed to reduce mortality and morbidity, excluding initiation of endotracheal intubation and external cardiac massage. Defibrillation, surgical intervention, hyperalimentation, or implementation of other measures deemed extraordinary may be restricted or excluded. This category of intervention is designated only for individuals with a qualifying condition; and~~

~~(C) Category III: Palliative measures only--Intervention in which measures directed toward reducing or eliminating pain, if possible, and enhancing the comfort and dignity of the individual will be maintained. However, no resuscitative measures will be performed. This category of intervention is designated only for individuals with a qualifying condition.~~

~~(15) Terminal condition--An incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable medical judgement, and in which the application of life-sustaining procedures would serve only to postpone the moment of the individual's death.~~

~~§405.54. Resuscitative Status Policy.~~

~~(a) The resuscitative status of an individual is an integral part of the overall evaluation of the medical care of the individual. An order for Category II or III is given only for individuals with a qualifying condition and should be based on a judgment that resuscitation is an ethically extraordinary and non-obligatory procedure for prolonging life.~~

~~(b) Resuscitative status should be discussed with the individual (or legal guardian) and his or her family in advance of a medical emergency. When a determination of that status is being made by the individual (or legal guardian), family, and physician, the following considerations are recommended:~~

~~(1)The competent individual must be allowed the right to determine resuscitative status. If the individual is incompetent (as defined in this subchapter), comatose, or incapable of communication, the decision is made with the consultation and consent of his or her legal guardian,~~

if any, or family. Because the wishes of the individual, if known, are to be honored, an expression of those wishes made when he or she was competent and capable of communication, e.g., in a directive issued in accordance with the Natural Death Act or the Durable Power of Attorney for Health Care, should be respected and followed.

(2)Individuals who are comatose are living human beings whose lives are to be valued; however, this does not mean that all technologies for prolonging life are appropriate or obligatory.

(3)Age, handicaps, economic status, or incompetency should not be determinants of resuscitative status.

(4)Category II status normally reflects a decision to pursue a conservative therapeutic effort in the face of a qualifying condition. However, there may be individuals with such severe recurring complications of a chronic disabling illness that resuscitation would be contraindicated even though they are not in the final stages of a single, defined terminal condition. The physician, with the consultation and consent of the individual, or, if the individual is unable to participate in decision-making, his or her legal guardian, if any, or family, may order the further restriction of other measures. In such cases, although treating the intervening illness remains the primary goal, full resuscitation could be considered non-obligatory and a Category II order would be appropriate.

(5) A Category III order does not indicate withdrawal of palliative procedures. An individual for whom such an order has been written will receive all the usual care given to enhance comfort, dignity, safety, and a sense of well-being.

(6) In any problematic case involving a Category II or III designation or when an individual with a Category II or III designation has no legal guardian and/or family, consultation with the facility ethics committee should be sought.

(c) Documentation supporting treatment decisions and consultations with the individual, family, and/or legal guardian should be in the attending physician's progress notes.

(d) In the event an individual has executed a directive as outlined in §405.57 of this title (relating to Legal Expression through Directive under the Natural Death Act), the provisions regarding life-sustaining treatment outlined in the directive supersedes any resuscitative status category.

§405.55. Determination and Implementation of Resuscitative Status Order.

(a) All individuals will be initially evaluated on an individual basis as to resuscitative status by the attending physician. Normally this evaluation will be made on admission to services or at the initial staffing, but in all cases within 30 days of the initial staffing.

(1) If the attending physician does not categorize an individual, then the individual will automatically be considered Category I.

(2) If an individual with a qualifying condition is competent and wishes to be classified Category II or III, then the request will be honored.

(3) If an individual with a qualifying condition is incompetent, comatose, or incapable of communication, then the wishes of the legal guardian and family will be honored, provided the attending physician concurs. If there is disagreement between the legal guardian and family, within the family, or between the legal guardian or family and physician, then the individual will be designated a resuscitative status according to the wishes of the legal guardian, if available, or family member in the following priority: the patient's spouse; a majority of the patient's reasonably available adult children; the patient's parents; or the patient's nearest living relative. Consultation with the facility ethics committee may be sought.

~~(4)If an individual with a qualifying condition is incompetent, comatose, or incapable of communication and does not have a legal guardian, then one of the following persons, in order of priority, as available, along with the attending physician, can determine resuscitative status: the spouse, a majority of the reasonably available adult children, the parents, or the nearest living relative of the individual.~~
~~(5)If an individual with a qualifying condition is incompetent, comatose, or incapable of communication and has no legal guardian and does not have family or such family is unavailable or unwilling to participate in decision-making, then the facility should seek the appointment of a legal guardian to the extent authorized by law or the attending physician(s) should seek consultation with the facility ethics committee before designating a Category II or III resuscitative status for the individual.~~
~~(b) If the condition of an individual deteriorates subsequent to initial categorization, and this contingency has not been previously addressed, the individual may be reclassified by following the procedure described in subsection (a) of this section.~~
~~(c) The attending physician will note in the medical record that the individual or his or her legal guardian, if any, or family have been consulted and agree with the designated status (or redesignation) as outlined in subsection (a) of this section, and its corresponding treatment plan. Such consultations should be witnessed and documented.~~
~~(d) The resuscitative status category of every individual must be reviewed and documented at least annually by the attending physician, preferably at the annual staffing, and should be reevaluated when there is a significant change in the individual's clinical condition.~~
~~(e) When the physician has documented the need and written an order for a Category II or III designation, a form specified by the department will be placed as the first page of the individual's chart. This form will have appropriate spaces for documentation of the annual review.~~

~~§405.56. General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Natural Death Act.~~

~~(a) The attending physician is charged with the responsibility of determining that all of the requirements of the Natural Death Act, where applicable, have been fulfilled before life-sustaining treatment is withheld or withdrawn. The Natural Death Act is referenced in §405.61 of this title (relating to Exhibits) as Exhibit A.~~
~~(b) If the attending physician refuses to comply with a directive or treatment decision by an individual with a qualifying condition, the physician shall make a reasonable effort to transfer the individual to another physician who will comply with the directive or treatment decision.~~
~~(c) Life-sustaining treatment may not be withheld from an individual known to be pregnant.~~

~~§405.57. Legal Expression through Directive under the Natural Death Act.~~

~~(a) When an adult individual is competent to make a decision regarding life-sustaining treatment and it is clinically appropriate to do so, the individual should be informed of the provisions of the Natural Death Act and provided with a copy of the Directive to Physicians form, referenced in §405.61 of this title (relating to Exhibits) as Exhibit B. The desires expressed by the competent individual should be observed.~~
~~(1) The Directive to Physicians may be made in writing at any time that the individual is competent to make such a decision.~~

(2) The Directive to Physicians may also be made by a nonwritten means of communication and documented by appropriate witnesses.
(3) The Directive to Physicians may be revoked by the individual at any time, without regard to the individual's mental state or competency.
(4) The present desire of the competent individual shall, at all times, supersede a Directive to Physicians.
(5) A competent adult individual can designate a person to make treatment decisions in the event that the individual becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.
(b) A Directive to Physicians may be made on behalf of an individual with a qualifying condition who is under 18 years of age by his or her spouse, if the spouse is an adult, the parent(s), or legal guardian of the individual. However, such a directive can be overridden by the contrary desire of a competent individual, even if he or she is under 18 years of age.
(c) Although only a competent individual may execute a Directive to Physicians, all individuals shall receive information about the right to execute a Directive to Physicians upon admission.

§405.58. Legal Expression Through Directive Under a Durable Power of Attorney for Health Care.

(a) A competent adult individual may designate a person (agent) to make treatment decisions in the event the individual later lacks the capacity to make health care decisions. Such a designation may be made in a directive under the provision of the Durable Power of Attorney for Health Care, referenced in §405.61 of this title (relating to Exhibits) as Exhibit C.
(1) The designated agent's authority to make treatment decisions, including the decision to withhold or withdraw life-sustaining treatment, begins when the attending physician certifies that the individual lacks capacity or the ability to understand and appreciate the nature and consequences of a health care decision, including significant benefits and harms of and reasonable alternatives to any proposed health care.
(2) The Durable Power of Attorney for Health Care appointing an agent for treatment decisions may be revoked by the individual at any time, without regard to the individual's mental state or competency.
(3) The present desires of the individual with capacity to make health care decisions shall at all times supersede a Durable Power of Attorney for Health Care.
(b) An individual may not execute a durable power of attorney for health care until the individual signs a statement affirming receipt of a disclosure statement (Part I of the Durable Power of Attorney for Health Care), referenced in §405.61 of this title (relating to Exhibits) as Exhibit C, and has read and understood its contents.

§405.59. Decision-making under the Natural Death Act and Durable Power of Attorney for Health Care for Individuals Who Have Issued Directives.

(a) If an individual has executed an advance directive, then the directive is attached to the individual's chart and/or medical record. Directives are evidence of the individual's wishes if/when he or she develops a qualifying condition. Directives are not necessarily related to resuscitative status. Should an individual develop a qualifying condition, the directive shall be honored and the resuscitative status shall reflect the directive.

(b) If an individual is unable to communicate and has previously issued a directive without designating a person to make treatment decisions, then the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the present desire of the individual.
(c) To the extent that a Durable Power of Attorney for Health Care conflicts with a Directive to Physicians under the Natural Death Act, the instrument executed later in time controls.

§405.60. Ethics Committee.

(a) An ethics committee must be established by each facility. The committee may be established multi-institutionally in cooperation with other health care providers, e.g., local hospitals, serving the same geographical area.
(b) The ethics committee must minimally consist of one facility physician; one consulting physician; one facility registered nurse from the individual's unit who has knowledge of the individual and his or her condition; a member of the clergy; an attorney not affiliated with the facility or TDMHMR; a facility social worker; and a representative of a family members' group or a representative of an advocacy group. The committee may also include the following additional members as available: additional consulting physician; additional facility registered nurse; medical support staff, such as a physical therapist, clinical pharmacist, clinical psychologist, or occupational therapist; a consulting social worker; a rights representative; additional representation by family members' and or advocacy organizations; and other knowledgeable persons as appropriate.
(c) Consultation with the ethics committee may be sought for any treatment decision, but should be sought as follows:
(1) when an individual is unable to give direction regarding the withholding or withdrawal of life-sustaining treatment, has no legal guardian, and has no person legally designated to make such a decision according to provisions of the Natural Death Act; and
(2) when a decision regarding the withholding or withdrawal of life-sustaining treatment is to be made and there is a conflict between or among the decision-makers.
(d) Decision-making concerning recommendations to be made by the ethics committee shall be by consensus. Each consultation with the ethics committee shall be documented in the individual's record.

§405.61. Exhibits.

The following exhibits are referenced in this subchapter, copies of which may be obtained by contacting TDMHMR, Office of Policy Development, P.O. Box 12668, Austin, TX 78711-2668:
(1)Exhibit A - Natural Death Act;
(2)Exhibit B - Directive to Physicians forms; and
(3)Exhibit C - Durable Power of Attorney for Health Care.

§405.62. References.

Reference is made in this subchapter to:
(1)the Natural Death Act, Texas Health and Safety Code, Chapter 672; and
(2)the Civil Practice and Remedies Code, Chapter 135.

~~§405.63. Distribution.~~

~~(a) This subchapter shall be distributed to the commissioner, and executive, management, and program staff of Central Office; superintendents/directors of all TDMHMR facilities; and advocacy organizations.~~
~~(b) The superintendent/director will ensure distribution of this subchapter to all appropriate staff.~~

EXHIBIT A.

TEXAS HEALTH AND SAFETY CODE
CHAPTER 672 — NATURAL DEATH ACT

§672.001. Short Title.
This chapter may be cited as the Natural Death Act.

§672.002. Definitions
In this chapter:
(1) "Attending physician" means the physician who has primary responsibility for a patient's treatment and care.
(2) "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.
(3) "Declarant" means a person who has executed or issued a directive under this chapter.
(4) "Directive" means an instruction made under §§672.003, 672.005, or 672.006 to withhold or withdraw life-sustaining procedures in the event of a terminal condition.
(5) "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.
(6) "Life-sustaining procedure" means a medical procedure or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a vital function, and only artificially postpones the moment of death of a patient in a terminal condition whose death is imminent or will result within a relatively short time without the application of the procedure. The term does not include the administration of medication or the performance of a medical procedure considered to be necessary to provide comfort or care or to alleviate pain.
(7) "Physician" means a physician licensed by the Texas State Board of Medical Examiners or 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.
(8) "Qualified patient" means a patient with a terminal condition that has been diagnosed and certified in writing by the attending physician and one other physician who have personally examined the patient.
(9) "Terminal condition" means an incurable or irreversible condition caused by injury, disease, or illness that would produce death without the application of life-sustaining procedures, according to reasonable judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the patient's death.

§672.003. Written Directive by Competent Adult; Notice to Physician.
(a) A competent adult may at any time execute a written directive
(b) The declarant must sign the directive in the presence of two witnesses, and those witnesses must sign the directive.
(c) A witness may not be:
(1) related to the declarant by blood or marriage;
(2) 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;
(3) the attending physician;
(4) an employee of the attending physician;
(5) 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 directly involved in the financial affairs of the facility;
(6) a patient in a health care facility in which the declarant is a patient; or
(7) a person who, at the time the directive is executed, has a claim against any part of the declarant's estate after the declarant's death.

(d) A declarant may include in a directive directions other than those provided by §672.004 and may designate in a directive a person to make a treatment decision for the declarant in the event the declarant becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.
(e) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is comatose, 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.

§672.004. Form of Written Directive.
A written directive may be in the following form:

"DIRECTIVE TO PHYSICIANS
"Directive made this day of (month, year).
"I, , being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth in this directive.
"1. If at any time I should have an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and if the application of life-sustaining procedures would serve only to artificially postpone the moment of my death, and if my attending physician determines that my death is imminent or will result within a relatively short time without application of life-sustaining procedures, I direct that those procedures be withheld or withdrawn, and that I be permitted to die naturally.
"2. In the absence of my ability to give directions regarding the use of those life-sustaining procedures, it is my intention that this directive be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from that refusal.
"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive has no effect during my pregnancy.
"4. This directive is in effect until it is revoked.
"5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.
"6. I understand that I may revoke this directive at any time.

"Signed
(City, County, and State of Residence)

I am not related to the declarant by blood or marriage. I would not be entitled to any portion of the declarant's estate on the declarant's death. I am not the attending physician of the declarant or an employee of the attending physician. I am not a patient in the health care facility in which the declarant is a patient. I have no claim against any portion of the declarant's estate on the declarant's death. Furthermore, if I am an employee of a health facility in which the declarant is a patient, I am not involved in providing direct patient care to the declarant and am not directly involved in the financial affairs of the health facility.

"Witness
"Witness

§672.005. Issuance of Nonwritten Directive by Competent Adult Qualified Patient.
(a) A competent qualified person 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. The witnesses must possess the same qualifications as are required by §672.003(c).
(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record and the witnesses shall sign the entry in the medical record.

§672.006. 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.~~

~~§672.007. Patient Desire Supersedes Directive.~~
~~The desire of a competent qualified patient, including a competent qualified patient younger than 18 years of age, supersedes the effect of a directive.~~

~~§672.008. 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 comatose, 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 §672.003(d), the attending physician and the designated person may make a treatment decision to withhold or withdraw life-sustaining procedures from the patient.~~
~~(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.~~

~~§672.009. 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 comatose, incompetent, or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian may make a treatment decision that may include a decision to withhold or withdraw life-sustaining procedures from the patient.~~
~~(b) If the patient does not have a legal guardian, the attending physician and at least two persons, if available, of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining procedures:~~
~~(1) the patient's spouse;~~
~~(2) a majority of 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 made in the presence of at least two witnesses who possess the same qualifications as are required by §672.003(c).~~
~~(e) 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 procedures.~~

~~§672.010. 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 condition.~~
~~(b) Before withholding or withdrawing life-sustaining procedures from a qualified patient under this chapter, the attending physician must:~~
~~(1) determine that the patient's death is imminent or will result within a relatively short time without application of those procedures;~~
~~(2) note that determination in the patient's medical record; and~~
~~(3) determine that the steps proposed to be taken are in accord with this chapter and the patient's existing desires.~~

~~§672.011. Duration of Directive.~~
~~A directive is effective until it is revoked as prescribed by §672.012.~~

~~§672.012. 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 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 chapter, 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.~~

~~§672.013. Reexecution of Directive.~~
~~A declarant may at any time reexecute a directive in accordance with the procedures prescribed by §672.003, including reexecution after the declarant is diagnosed as having a terminal condition.~~

~~§672.014. Effect of Directive on Insurance Policy and Premiums.~~
~~(a) The fact that a person has executed or issued a directive under this chapter 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 procedures are withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy.~~
~~(c) A physician, health facility, health provider, insurer, or health care service plan may not require a person to execute or issue a directive as a condition for obtaining insurance for health care services or receiving health care services.~~
~~(d) The fact that a person has executed or issued or failed to execute or issue a directive under this chapter may not be considered in any way in establishing insurance premiums.~~

~~§672.015. Limitation of Liability for Withholding or Withdrawing Life-Sustaining Procedures.~~
~~(a) A physician or health facility that causes life-sustaining procedures to be withheld or withdrawn from a qualified patient in accordance with this chapter is not civilly liable for that action unless negligent.~~
~~(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining procedure from a qualified patient in accordance with this chapter is not civilly liable for that action unless negligent.~~

~~(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this chapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless negligent.~~

~~§672.016. Limitation of 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 not civilly or criminally liable for failing to effectuate a qualified patient's directive.~~
~~(c) If an attending physician refuses to comply with a directive or treatment decision, the physician shall make a reasonable effort to transfer the patient to another physician.~~

~~§672.017. Honoring Directive Does Not Constitute Offense of Aiding Suicide.~~
~~A person does not commit an offense under §22.08, Penal Code, by withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this chapter.~~

~~§672.018. 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 procedures to be withheld or withdrawn from another person contrary to the person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining procedures to be withheld or withdrawn from the other person with the result that the other person's death is hastened.~~

~~§672.019. Pregnant Patients.~~
~~A person may not withdraw or withhold life-sustaining procedures under this chapter from a pregnant patient.~~

~~§672.020. Mercy Killing Not Condoned.~~
~~This chapter 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 chapter.~~

~~§672.021. Legal Right or Responsibility Not Affected.~~
~~This chapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining procedures in a lawful manner.~~

EXHIBIT B

Directive to Physicians
For Persons 18 Years of Age and Over

Directive made this _____ day of _____ (month, year).

I, _____, being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life sustaining procedures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent or will result within a relatively short time without application of life sustaining procedures, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. In the absence of my ability to give directions regarding the use of such life sustaining procedures, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.
3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.
4. This directive shall be in effect until it is revoked.
5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.
6. I understand that I may revoke this directive at any time.
7. I understand that Texas law allows me to designate another person to make a treatment decision for me if I should become comatose, incompetent, or otherwise mentally or physically incapable of communication. I hereby designate

   (print or type name) _____, who resides at (address)

   to make such a treatment decision for me if I should become incapable of communicating with my physician.

   If the person I have named above is unable to act on my behalf, I authorize the following person to do so:
   Name
   Address

   I have discussed my wishes with these persons and trust their judgment.
8. I understand that if I become incapable of communication, my physician will comply with this directive unless I have designated another person to make a treatment decision for me, or unless my physician believes this directive no longer reflects my wishes.

Signed

City, County, and State of Residence

Two witnesses must sign the directive in the spaces provided below.

I am not related to the declarant by blood or marriage; nor would I be entitled to any portion of the declarant's estate on his decease; nor am I the attending physician of declarant or an employee of the attending physician; nor am I a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his/her decease. Furthermore, if I am an employee of a health facility in which the declarant is a patient, I am not involved in providing direct patient care to the declarant nor am I directly involved in the financial affairs of the health facility.

Witness

Witness

EXHIBIT B

Directive to Physicians
For Persons Under 18 Years of Age

Directive made this _____ day of _____ (month, year).

On behalf of _____, a qualified patient under the Texas Natural Death Act who is under 18 years of age, I/we _____, being of sound mind, willfully and voluntarily make known my/our desire that his/her life not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time the patient whose name appears above should have an incurable or irreversible condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of his/her death and where his/her attending physician determines that his/her death is imminent or will result within a relatively short time without application of life-sustaining procedures, I/we direct that such procedures be withheld or withdrawn, and that he/she be permitted to die naturally.
2. On behalf of the said patient, it is my/our intention that this directive shall be honored by his/her physicians as the final expression of my/our legal right to refuse medical or surgical treatment on behalf of the said patient and to accept the consequences from such refusal.
3. If she has been diagnosed as pregnant and that diagnosis is known to her physician, this directive shall have no force or effect during the course of her pregnancy.
4. This directive shall be in effect until it is revoked. I/we understand that my/our authority to execute this directive on behalf of the above-named patient expires on his/her 18th birthday.
5. I/we understand the full import of this directive and I/we am/are emotionally and mentally competent to make this directive.
6. I/we understand that the desire of the above-named patient, if mentally competent, to receive life-sustaining treatment shall at all times supersede the effect of this directive.

Signed

City, County, and State of Residence

Indicate relationship to patient _____ Spouse _____ Parents _____ Legal Guardian

Two witnesses must sign the directive in the spaces provided below.

I am not related to the patient whose name appears above by blood or marriage; nor would I be entitled to any portion of the patient's estate on his/heer decease; nor am I the attending physician of declarant or an employee of the attending physician; nor am I a patient in the health care facility in which the above named patient is a being treated, or any person who has a claim against any portion of the patient's estate upon his/her decease. Furthermore, if I am an employee of a health facility in which the above named patient is being treated, I am not involved in providing direct care to the patient nor am I directly involved in the financial affairs of the health facility.

Witness

Witness

EXHIBIT C

DURABLE POWER OF ATTORNEY FOR HEALTH CARE — PART I (Disclosure Statement)

THIS 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 no longer capable of making them 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 begins when your doctor certifies that you lack the capacity 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 had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure 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 home, or residential care home, 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 permit a person to do 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 who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so 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 durable power of attorney for health care. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

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

EXHIBIT C

~~THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO OR MORE QUALIFIED WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:~~

1. ~~the person you have designated as your agent;~~
2. ~~your health or residential care provider or an employee of your health or residential care provider;~~
3. ~~your spouse;~~
4. ~~your lawful heirs or beneficiaries name in your will or a deed; or~~
5. ~~creditors or persons who have a claim against you.~~

EXHIBIT C

DURABLE POWER OF ATTORNEY FOR HEALTH CARE
PART II (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. The durable power of attorney for health care 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 is your marriage is dissolved.)

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.

EXHIBIT C

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

~~PRIOR DESIGNATIONS REVOKED.~~

~~I revoke any prior durable power of attorney for health care.~~

~~ACKNOWLEDGEMENT OF DISCLOSURE STATEMENT.~~

~~I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.~~

~~(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY.)~~

~~I sign my name to this durable power of attorney for health care on day of 199 , at:~~

~~(city and state)~~

~~(signature)~~

~~(print name)~~

~~STATEMENT OF WITNESSES.~~

~~I declare under penalty of perjury that the principal has identified himself or herself to me, that the principal signed or acknowledged this durable power of attorney in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, that I am not the person appointed as agent by this document, and that I am not a provider of health or residential care, an employee of a provider of health or residential care, the operator of a community care facility, or an employee of an operator of a health care facility.~~

~~I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to any part of the estate of the principal on the death of the principal under a will or by operation of law.~~

~~Witness signature:~~

~~Name:~~

~~Date:~~

~~Address:~~

~~Witness signature:~~

~~Name:~~

~~Date:~~

~~Address:~~