



Health Facility Compliance Guidance Letter

Number: GL 23-2003
Title: Advance Directives, Do-Not-Resuscitate Orders, and Health Care Treatment Decisions (HB 3162-88R)
Provider Types: General Hospitals, Special Hospitals, and Special Care Facilities
Date Issued: December 1, 2023

1.0 Subject and Purpose

The Texas Health and Human Services Commission (HHSC) provides guidance to providers HHSC licenses on enacted legislation impacting their provider type. [House Bill \(HB\) 3162](#), relating to advance directives, do-not-resuscitate orders, and health care treatment decisions made by or on behalf of certain patients, including a review of directives and decisions, took effect September 1, 2023.

This letter provides instruction to general hospitals, special hospitals, and special care facilities regarding HB 3162 and outlines provider responsibilities and expectations.

2.0 Background and History

As stated in [HB 3162's author's and sponsor's statement of intent](#), HB 3162 is the result of hundreds of hours of negotiations between stakeholders representing medical professionals, medical facilities, and patient advocate groups.

The bill author's and sponsor's statement of intent also clarifies that HB 3162 seeks to improve protections for patients, medical professionals, and medical facilities and balance the rights of patients and their families with physicians' medical judgments.

3.0 Legislative Details & Provider Responsibilities

HB 3162 amended [Texas Health and Safety Code \(HSC\) Chapter 166, Subchapter B](#) by:

- Adding new:
 - HSC Section [166.0445](#),
 - HSC Section [166.0465](#),
 - HSC Section [166.054](#), and
- Amending:
 - HSC Section [166.046](#), and
 - HSC Section [166.052](#).

New HSC Section 166.0445 protects physicians and health care professionals acting under a physician's direction from civil or criminal liability and unprofessional conduct license actions for participating in a medical procedure performed under [HSC Section 166.046\(d-2\)](#).

New HSC Sections 166.0465 and 166.054 and amended HSC Sections 166.046 and 166.052 amend requirements for advance directives and health care treatment decisions when a patient is incompetent or incapable of communication and requires health care facilities to take certain actions when a physician refuses to honor a patient's advance directive or health care decision. Refer to [Sections 4.0-5.0](#) below for more information about these new and amended requirements.

HB 3162 also amended the following Sections in [HSC Chapter 166, Subchapter E](#):

- HSC Section [166.203](#),
- HSC Section [166.204](#),
- HSC Section [166.205](#), and
- HSC Section [166.206](#).

These subsections amended requirements regarding do-not-resuscitate (DNR) orders within health care facilities. Refer to [Section 6.0](#) below for more information about these amended requirements.

[HSC Section 166.209](#) amends enforcement requirements for violations of [HSC Chapter 166, Subchapter E](#). Refer to [Section 7.0](#) below for more information about this section.

HB 3162 also amended [HSC Section 313.004](#) to specify who may provide patient consent for medical treatment when the patient does not have a legal guardian or reasonably available agent under a medical power of attorney.

To comply with HB 3162's provisions and HSC Section 166.054, HHSC is currently working on amending rules at Texas Administrative Code Title 25 (25 TAC) Section 133.41 and Section 133.49 and adopting new rules at 26 TAC Section 506.40. HHSC will publish these proposed amended and new rules in the *Texas Register* for public comment in the coming months before adopting the proposed rules.

Note: HHSC encourages stakeholders interested in commenting on the proposed rules to [sign up for GovDelivery](#) to receive notice regarding when the proposed rules publish for formal comment in the *Texas Register*.

4.0 Changes to Procedure if Not Effectuating Directive or Treatment Decision for Certain Patients

Under amended [HSC Section 166.046](#), when a physician refuses to honor a patient's advance directive or health care decision when that patient is incompetent or otherwise mentally or physically incapable of communication, the facility's ethics or medical committee must review that physician's decision and determine whether the decision was appropriate.¹ The patient's attending physician, with assistance from the facility, must also make a reasonable effort to transfer the patient to a physician willing to comply with the directive.² The attending physician may not serve as a member of the ethics or medical committee during the review of the physician's decision.³

Amended HSC Section 166.046 requires the facility's ethics or medical committee consider the following factors during the review:

- The patient's well-being, without making any judgement on the patient's quality of life,⁴ and

¹ [HSC Section 166.046\(a-1\)](#).

² [HSC Section 166.046\(d\)](#).

³ [HSC Section 166.046\(a-1\)](#).

⁴ [HSC Section 166.046\(a-2\)](#).

- When determining whether life-sustaining treatment is medically inappropriate, whether the treatment:
 - will prolong the natural process of dying or hasten the patient's death;⁵
 - will result in substantial, irremediable, and objectively measurable physical pain that does not outweigh the benefit of treatment;⁶
 - will seriously exacerbate life-threatening medical problems that does not outweigh the benefit of treatment;⁷
 - is consistent with prevailing standard of care;⁸ and
 - is contrary to patient's clearly documented desires.⁹

During the review, the committee must not consider a patient's preexisting disability unless the disability is relevant in determining whether the medical or surgical intervention decided upon by the patient or the person responsible for the patient's health care decisions is medically appropriate.¹⁰

When the committee completes their review, the facility must include the decision reached and an explanation of the committee's decision regarding their review of a physician's refusal to honor an advance directive or health care or treatment decision in the patient's medical record.¹¹

4.1 Review Process Notification

[HSC Section 166.046](#) requires the person responsible for a patient's health care decisions to be notified in writing, not less than seven calendar days before the ethics or medical committee meeting to discuss the patient's directive, of the following:¹²

- The meeting's date, time, and location,¹³

⁵ [HSC Section 166.046\(a-2\)\(1\)](#).

⁶ [HSC Section 166.046\(a-2\)\(2\)](#).

⁷ [HSC Section 166.046\(a-2\)\(3\)](#).

⁸ [HSC Section 166.046\(a-2\)\(4\)](#).

⁹ [HSC Section 166.046\(a-2\)\(5\)](#).

¹⁰ [HSC Section 166.0465\(b\)](#).

¹¹ [HSC Section 166.046\(c\)](#).

¹² [HSC Section 166.046\(b\)\(1\)](#).

¹³ [HSC Section 166.046\(b\)\(1\)\(C\)](#).

- The ethics or medical committee review process and other related policies and procedures,¹⁴
- The rights of the person responsible for the patient's health care decisions to:¹⁵
 - Attend the meeting¹⁶ to discuss the patient's directive along with the patient's immediate family, legal counsel, physician, health care professional, or patient advocate,¹⁷
 - Receive in writing the name and title of each committee member in the meeting,¹⁸
 - Justify treatment requests on the patient's behalf,¹⁹
 - Respond to submitted or presented information,²⁰
 - State concerns regarding the committee's compliance with HSC Section 166.046 and [HSC Section 166.0465](#),²¹
 - Receive written notice of the:
 - Review decision and explanation for the decision,²²
 - Patient's major medical conditions as identified by the committee,²³
 - Committee's statement of compliance with [HSC Section 166.046\(a-2\)](#) and HSC Section 166.0465,²⁴ and
 - Health care facilities contacted for potential patient transfer and the reason for any transfer request denials,²⁵ and
 - Receive a copy of or electronic access to the portion of the patient's medical record related to the patient's treatment and reasonably

¹⁴ [HSC Section 166.046\(b\)\(1\)\(A\)](#).

¹⁵ [HSC Section 166.046\(b\)\(1\)\(B\)](#).

¹⁶ [HSC Section 166.046\(b\)\(3\)\(A\)](#).

¹⁷ [HSC Section 166.046\(b\)\(3\)\(C\)\(i\)](#).

¹⁸ [HSC Section 166.046\(b\)\(3\)\(B\)](#).

¹⁹ [HSC Section 166.046\(b\)\(3\)\(C\)\(ii\)\(a\)](#).

²⁰ [HSC Section 166.046\(b\)\(3\)\(C\)\(ii\)\(b\)](#).

²¹ [HSC Section 166.046\(b\)\(3\)\(C\)\(ii\)\(c\)](#).

²² [HSC Section 166.046\(b\)\(3\)\(D\)\(i\)](#).

²³ [HSC Section 166.046\(b\)\(3\)\(D\)\(ii\)](#).

²⁴ [HSC Section 166.046\(b\)\(3\)\(D\)\(iii\)](#).

²⁵ [HSC Section 166.046\(b\)\(3\)\(D\)\(iv\)](#).

available diagnostic results and reports during the patient's current admission to the facility,²⁶

- The work contact information of the facility's personnel responsible for overseeing the patient's transfer to another physician or facility willing to comply with the patient's directive,²⁷ and
- The factors listed under HSC Section 166.046(a-2),²⁸ and
- The language in [HSC Section 166.0465](#).²⁹

The notification described above must accompany the following information.

- Either of the following forms described by amended [HSC Section 166.052](#):
 - When There Is a Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish to Continue,³⁰ or
 - When There Is a Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish to Stop.³¹
- 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 [HSC Section 166.053](#).³²

4.2 Individuals Attending the Ethics or Medical Committee Meeting on the Facility's or Patient's Behalf

When the health care facility or the person responsible for the patient's health care decisions invites legal counsel to attend the ethics or medical committee meeting to discuss the patient's directive, the health care facility or the person responsible for the patient's health care decisions, or both, as

²⁶ [HSC Section 166.046\(b\)\(3\)\(E\)-\(F\)](#).

²⁷ [HSC Section 166.046\(b\)\(1\)\(D\)](#).

²⁸ [HSC Section 166.046\(b\)\(1\)\(E\)](#).

²⁹ [HSC Section 166.046\(b\)\(1\)\(F\)](#).

³⁰ [HSC Section 166.052\(a\)](#).

³¹ [HSC Section 166.052\(b\)](#).

³² [HSC Section 166.046\(b\)\(2\)](#).

applicable, must make a good faith effort to provide written notice to the committee not less than 48 hours before the meeting starts.³³

The patient's immediate family, legal counsel, physician, health care professional, patient advocate, and person responsible for the patient's health care decisions may not attend the ethics or medical committee's executive session.³⁴

4.3 Transferring the Patient to a Physician Willing to Comply with the Directive

Amended [HSC Section 166.046](#) requires the patient's attending physician to make a reasonable effort to transfer the patient to a physician willing to comply with the directive after the person responsible for a patient's health care decisions is notified of the information in [Section 4.1](#) of this letter.³⁵

4.31 Performing a Medical Procedure Before Transfer

If another health care facility denies the patient's transfer request, the health care facility's personnel assisting with the patient's transfer efforts must ask whether the facility would be more likely to approve the transfer request if a tracheostomy or a percutaneous endoscopic gastrostomy is performed on the patient.³⁶

When the potential receiving facility states it is more likely to accept the patient's transfer if a tracheostomy or a percutaneous endoscopic gastrostomy is performed on the patient,³⁷ the physician responsible for the patient's care must perform each medical procedure requested, provided the following conditions are also met:

- According to the physician's judgment, the medical procedure is:
 - Reasonable and necessary to aid the patient's transfer,³⁸
 - Within the prevailing standard of medical care,³⁹ and
 - Not medically contraindicated or medically inappropriate,⁴⁰

³³ [HSC Section 166.046\(b-3\)](#).

³⁴ [HSC Section 166.046\(b-2\)](#).

³⁵ [HSC Section 166.046\(d\)](#).

³⁶ [HSC Section 166.046\(d-1\)](#).

³⁷ [HSC Section 166.046\(d-2\)\(1\)\(B\)](#).

³⁸ [HSC Section 166.046\(d-2\)\(1\)\(A\)](#).

³⁹ [HSC Section 166.046\(d-2\)\(1\)\(C\)\(i\)](#).

⁴⁰ [HSC Section 166.046\(d-2\)\(1\)\(C\)\(ii\)](#).

- The physician performing the medical procedure has the training, experience,⁴¹ and medical privileges necessary to perform the medical procedure at the facility,⁴²
- The facility where the patient is receiving care has the resources necessary to perform the medical procedure at the facility,⁴³ and
- The person responsible for the patient's health care decisions provides consent on the patient's behalf for the medical procedure.⁴⁴

When a request for a tracheostomy or a percutaneous endoscopic gastrostomy satisfies all the conditions above and the person responsible for the patient's health care decisions provides consent on the patient's behalf for the medical procedure within 24 hours of the request for consent, the facility must provide the person responsible for the patient's health care decisions with a written notice⁴⁵ that the facility will cease providing life-sustaining treatment 25 calendar days after the patient receives the medical procedure⁴⁶ unless ordered to extend life-sustaining treatment by the appropriate district or county court.⁴⁷

When a request for a tracheostomy or a percutaneous endoscopic gastrostomy does not satisfy all the conditions above or when the person responsible for the patient's health care decisions does not provide consent on the patient's behalf for the medical procedure within 24 hours of the request for consent, the facility must provide the person responsible for the patient's health care decisions with a written notice⁴⁸ that the facility will cease providing life-sustaining treatment after 25 calendar days unless ordered to extend life-sustaining treatment by the appropriate district or county court.^{49,50,51}

5.0 Reporting Requirements Regarding Ethics or Medical Committee Processes

Under new [HSC Section 166.054](#), a health care facility must report to HHSC certain information within 180 days after the facility sends the notice

⁴¹ [HSC Section 166.046\(d-2\)\(1\)\(D\)](#).

⁴² [HSC Section 166.046\(d-2\)\(1\)\(E\)](#).

⁴³ [HSC Section 166.046\(d-2\)\(1\)\(F\)](#).

⁴⁴ [HSC Section 166.046\(d-2\)\(1\)\(G\)](#).

⁴⁵ [HSC Section 166.046\(d-2\)\(2\)\(A\)](#).

⁴⁶ [HSC Section 166.046\(i\)\(1\)](#).

⁴⁷ [HSC Section 166.046\(g\)](#).

⁴⁸ [HSC Section 166.046\(d-2\)\(2\)\(B\)](#).

⁴⁹ [HSC Section 166.046\(e\)](#).

⁵⁰ [HSC Section 166.046\(i\)\(3\)](#).

⁵¹ [HSC Section 166.046\(d-2\)\(2\)\(B\)](#).

described by [HSC Section 166.046\(b\)\(1\)](#) and [Section 4.1](#) of this letter.⁵²
This information includes:

- The number of days between when the facility admitted the patient to the date the notice was provided under HSC Section 166.046(b)(1),⁵³
- Whether the ethics or medical committee met to review the case and, if so, the number of days between the date of notice and the date the committee held the meeting,⁵⁴
- Whether the patient:
 - Was transferred to a different physician within the facility,⁵⁵
 - Was transferred to a different health care facility,⁵⁶
 - Was discharged to a private residence or non-health care facility setting,⁵⁷ or
 - Died while receiving life-sustaining treatment,⁵⁸
- Whether the facility withheld or withdrew life-sustaining treatment 25 days after the facility provided a start notice, as defined by [HSC Section 166.046\(i\)\(3\)](#), and, if so, whether the patient:⁵⁹
 - Died at the facility,⁶⁰
 - Is a current patient at the facility,⁶¹
 - Was transferred to a different facility,⁶² or
 - Was discharged to a private residence or non-health care facility setting.⁶³

⁵² [HSC Section 166.054\(a\)](#).

⁵³ [HSC Section 166.054\(a\)\(1\)](#).

⁵⁴ [HSC Section 166.054\(a\)\(2\)](#).

⁵⁵ [HSC Section 166.054\(a\)\(3\)\(A\)](#).

⁵⁶ [HSC Section 166.054\(a\)\(3\)\(B\)](#).

⁵⁷ [HSC Section 166.054\(a\)\(3\)\(C\)](#).

⁵⁸ [HSC Section 166.054\(a\)\(4\)](#).

⁵⁹ [HSC Section 166.054\(a\)\(5\)](#).

⁶⁰ [HSC Section 166.054\(a\)\(5\)\(A\)](#).

⁶¹ [HSC Section 166.054\(a\)\(5\)\(B\)](#).

⁶² [HSC Section 166.054\(a\)\(5\)\(C\)](#).

⁶³ [HSC Section 166.054\(a\)\(5\)\(D\)](#).

- The patient's age category,⁶⁴ sex,⁶⁵ and race,⁶⁶
- The patient's health insurance coverage category,⁶⁷ and
- Whether the facility is aware of and able to reasonably verify:
 - Any public disclosure of the contact information for medical professionals or members of the ethics or medical committee in connection to the patient's stay at the facility,⁶⁸ and
 - 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 to the patient's stay at the facility.⁶⁹

This information is:

- Confidential⁷⁰ and may not be used to identify any individual, entity, or facility,⁷¹
- Not admissible in certain civil or criminal proceedings,⁷²
- Prohibited from being used in relation to any disciplinary action by a licensing or regulatory agency,⁷³ and
- Exempted from disclosure under [Government Code Chapter 552](#) except for legislative purposes.⁷⁴

As required under [HSC Section 166.054\(c\)\(1\)](#), HHSC must publish on its website an aggregate report of information submitted in the preceding year by April 1 of each year.

If HHSC receives fewer than 10 reports under [HSC Section 166.054\(a\)](#) within one year, HHSC does not include in that year's annual report certain patient demographic information and certain information related to patients for whom life-sustaining treatment was withheld or withdrawn after a start

⁶⁴ [HSC Section 166.054\(a\)\(6\)](#).

⁶⁵ [HSC Section 166.054\(a\)\(8\)](#).

⁶⁶ [HSC Section 166.054\(a\)\(9\)](#).

⁶⁷ [HSC Section 166.054\(a\)\(7\)](#).

⁶⁸ [HSC Section 166.054\(a\)\(10\)](#).

⁶⁹ [HSC Section 166.054\(a\)\(11\)](#).

⁷⁰ [HSC Section 166.054\(b\)](#).

⁷¹ [HSC Section 166.054\(e\)](#).

⁷² [HSC Section 166.054\(g\)\(1\)](#).

⁷³ [HSC Section 166.054\(g\)\(2\)](#).

⁷⁴ [HSC Section 166.054\(g\)\(3\)](#).

notice, as defined by HSC Section 166.046(i)(3).⁷⁵ HHSC includes this aggregate information for all years it was not included in a preceding annual report in the next annual report HHSC prepares after HHSC receives 10 or more reports.⁷⁶

6.0 Changes to Do-Not-Resuscitate Order Requirements

Amended [HSC Section 166.203](#) changes some of the conditions under which a hospital DNR order is valid. This includes:

- Extending validity to DNR orders issued by a physician providing direct care to the patient,⁷⁷ and
- Clarifying that DNR orders are only valid if it is the patient's attending physician's judgement that the patient's death is imminent within minutes to hours.⁷⁸

A valid DNR order must also comply with:

- Out-of-hospital DNR orders executed per HSC Sections 166.082, 166.084, or 166.085,⁷⁹ or
- The directions of a patient's proxy per HSC Chapter 166, Subchapter B if the patient becomes incompetent or otherwise incapable of communication.⁸⁰

For patients who are incompetent or incapable of communication, DNR orders are valid if the orders are:

- Issued by the patient's attending physician,
- Agreed on by the attending physician and the person responsible for the patient's health care decisions, and
- Concurred by another physician not involved in the direct treatment of the patient or a representative of an ethics or medical committee.⁸¹

⁷⁵ [HSC Section 166.054\(c\)\(2\)](#).

⁷⁶ [HSC Section 166.054\(d\)](#).

⁷⁷ [HSC Section 166.203\(a\)\(1\)](#).

⁷⁸ [HSC Section 166.203\(a\)\(2\)\(B\)\(i\)](#).

⁷⁹ [HSC Section 166.203\(a\)\(1\)\(C\)](#).

⁸⁰ [HSC Section 166.203\(a\)\(1\)\(D\)\(iii\)](#).

⁸¹ [HSC Section 166.203\(a\)\(3\)](#).

DNR orders must comply with the health care facility's policies and take effect at the time the order is issued.⁸²

6.1 Changes to Notice Requirements for DNR Orders

New [HSC Section 166.204\(a-1\)](#) requires any of the following personnel to disclose a DNR order to a patient if the personnel have knowledge of the order and a physician has determined the patient has become competent:

- A physician,
- A physician assistant, or
- A nurse providing direct care to a patient.

A physician, physician assistant, nurse, or other person acting on behalf of the facility must inform the patient or, if the patient is incompetent, the person responsible for the patient's health care decisions, of a DNR order issued by the patient's attending physician before the DNR order is placed in the patient's medical record.⁸³

If the patient is incompetent, a facility is not required to inform the individual authorized to make treatment decisions of the DNR order before it is placed in a patient's medical record if the facility has already notified the individual that the patient's attending physician issued the order.⁸³

6.2 Changes to Revocation Requirements for DNR Orders

Amended [HSC Section 166.205](#), extends the requirements for revoking a DNR order to physicians providing direct care to a patient per [HSC Section 166.203\(a\)\(1\)\(D\) or \(E\)](#) or [HSC Section 166.203\(a\)\(3\)](#).⁸⁴

A patient's attending physician may revoke any valid DNR order in situations that comply with the requirements [HSC Section 166.205\(c\)](#).

A patient's attending physician must revoke a DNR order issued by the physician when the patient's death was imminent within minutes to hours if the patient's condition no longer meets that criterion.⁸⁵

6.3 Changes to Procedure for Failure to Execute a DNR Order

⁸² [HSC Section 166.203\(b\)](#).

⁸³ [HSC Section 166.203\(c\)](#).

⁸⁴ [HSC Section 166.205\(a\)\(3\)](#).

⁸⁵ [HSC Section 166.205\(c-1\)](#).

Amended [HSC Section 166.206](#) extends the requirements regarding attending physicians who do not comply with a DNR order to any physician that does not comply with a patient's DNR order.⁸⁶

7.0 Changes to Enforcement

Amended [HSC Section 166.209](#) clarifies that a person does not commit an offense of violating [HSC Chapter 166, Subchapter E](#) if the person reasonably believed their actions or omissions complied with the wishes of the patient or the person making health care treatment decisions on behalf of the patient.⁸⁷

8.0 Resources

Review HB 3162 (88th Legislature, Regular Session, 2023) at:
<https://capitol.texas.gov/tlodocs/88R/billtext/html/HB03162F.htm>.

Review Texas Health and Safety Code Chapter 166, Subchapter B at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm#B>.

Review Texas Health and Safety Code Chapter 166, Subchapter E at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.166.htm#E>.

Review Texas Health and Safety Code Section 313.004 at:
<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.313.htm#313.004>.

Review HB 3162 Author's/Sponsor's Statement of Intent at:
<https://capitol.texas.gov/tlodocs/88R/analysis/html/HB03162E.htm>.

To receive notice regarding when the proposed rules publish for formal comment in the *Texas Register* and to receive future updates, sign up for GovDelivery at:
<https://service.govdelivery.com/accounts/TXHHSC/subscriber/new>.

9.0 Contact Information

Email the Policies and Rules Unit at HCR_PRU@hhs.texas.gov if you have any questions about this letter.

⁸⁶ [HSC Section 166.206\(a\)-\(b\)](#).

⁸⁷ [HSC Section 166.209\(c\)](#).