

May 18, 2018

PUBLIC COMMENT LETTER

Texas Health and Human Services Commission

Mail Code 1065

P.O. Box 13247

Austin, TX 78711

Submitted Electronically: SB11DNRrulecomments@hhsc.state.tx.us

Re: Texas Health and Human Services Commission Proposed Amendments regarding DNR orders; Published April 20, 2018.

Dear Sir or Madam:

On behalf of our more than 450 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association appreciates the opportunity to review the above-referenced proposed amendments, published in the April 20, 2018 *Texas Register* to implement Senate Bill 11, 85th Texas Legislature, Special Session, and the new Subchapter E in Texas Health and Safety Code Ch. 166. Texas hospitals have long supported a patient's right to direct their own health care treatment and choices, and welcome the opportunity to provide comments to strengthen and clarify the proposed amendments.

First, THA has major concerns with the notice requirements set forth in the proposed 25 TAC §133.41(k)(3)(G), Medical Staff, and §133.41(o)(2)(E), Nursing Services. Taken together, these requirements exceed the scope of those set out in the authorizing legislation and Texas Health and Safety Code §§166.203 and 166.204, which, among other things:

- Only require notice of an inpatient do-not-resuscitate order in specific circumstances;
- Permit individuals other than physicians and nursing staff to provide such notice; and,
- Require that agents, guardians or family members be "known," and call for "reasonably diligent efforts" when notice is required by law.

The proposed amendments would require notice of *all* inpatient DNR orders and require the provision of notice by *both* a physician *and* nursing staff. This requirement is overly broad, and **THA requests removal of all provisions related to notice**, including the documentation of such notice, from the proposed amendments. Applicable law will guide procedures regarding notice of an inpatient DNR order, making these proposed amendments unnecessary.

Second, SB 11, Texas Health and Safety Code §166.202, and the "Background and Purpose" section of THHSC's *Texas Register* entry are clear on the exemption from SB 11's provisions for out-of-hospital DNR orders. Failure to clearly include this exemption in the proposed amendments

may improperly subject out-of-hospital DNR orders to 25 TAC Ch. 133. **THA requests a clear exemption for out-of-hospital DNR orders in the proposed amendments.**

Third, neither SB 11 nor Texas Health and Safety Code Ch. 166 require a hospital's medical staff or a hospital's governing body to adopt policies or procedures regarding in-hospital DNR orders. Including such requirements in the proposed amendments is beyond SB 11's scope and creates unneeded barriers to compliance. Furthermore, current 25 TAC §133.41(k)(3) does not address specific medical practices to the extent the proposed amendment would. **THA requests that the requirements to adopt policies in medical staff bylaws and through hospital governing bodies be removed from proposed 25 TAC §133.41(k)(3)(G), Medical Staff, and §133.41(f)(6)(G), Governing Body.**

Fourth, neither SB 11 nor Texas Health and Safety Code Ch. 166 require the hospital's nursing staff to adopt a nursing plan of care regarding in-hospital DNR orders. These proposed amendments ultimately will require nursing staff to ensure compliance with certain SB 11 provisions. This is beyond SB 11's scope, is an inappropriate use of the nursing care planning process and could create an inability to comply with regulations. **THA requests removal of the proposed amendments to 25 TAC §133.41(o)(2)(E), Nursing Services.**

Finally, to ensure the regulations' clarity, THA suggests:

- Specifying in the proposed 25 TAC §133.2(17), Definitions, that an in-hospital DNR order may be in written or electronic form. THA suggests the following change to the definition: “A written or electronic order instructing a health care professional....” See 43 TexReg 2356. As appropriate, THA requests similar clarification that an in-hospital DNR order may be in written or electronic form in proposed 25 TAC §133.41(j)(5), Medical Record Services.
- Specifying the ability for physicians to issue a verbal in-hospital DNR order, which is then entered into the written or electronic record by an individual authorized to transcribe physician orders into the medical record.
- Clarifying that a minor's parent(s) would qualify as a “legal guardian” under SB 11's provisions.
- Defining “incompetent” as it is used in the proposed amendments. At a minimum, the definition could be tied to Texas Health and Safety Code §166.002(8).
- Clarifying that the term “attending physician” includes any physician providing direct care to the patient subject to the in-hospital DNR order. This clarification is needed to prevent limiting the control of an in-hospital DNR order to just one physician. Any number of physicians could provide care to a patient in the hospital, and the single physician with primary responsibility may not be available to effect an in-hospital DNR order – while

another physician on the patient's treatment team may be more readily available and current on the patient's medical condition for the purposes of issuing an in-hospital DNR order.

THA looks forward to working with THHSC, and welcomes any opportunity to engage with stakeholders to ensure these amendments are successfully and appropriately implemented. Please feel free to contact me with any questions or comments, or if there is anything we can assist with.

Respectfully,



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