

Senate Bill 439 and House Bill 1094

Patient and Family Treatment Choice Rights Bill

Authored by Senator Robert Deuell and Representatives Bryan Hughes and Eddie Rodriguez

Currently, Texas law allows for a physician to withdraw life-sustaining treatment (including food and water) from a patient despite the patient's advance directive or expressed wishes. Once the physician's decision is made and then approved by the ethics committee at the hospital, the patient and/or family have only 10 days to find a transfer to another facility or another physician. The physician or facility is not obligated to treat the patient beyond the 10th day, which can and has led to the death of the patient. Rarely are transfers effectuated either by the family or the facility within the 10 day allotment. Texas Right to Life seeks to change the law so that patients and their families are given sufficient time to locate a transfer during which time the patient will continue receiving all necessary treatment.

Experiences with the Current Law

- ◆ Patients' families are forced to sacrifice critical time with their loved ones to search for a transfer; most families are neither trained nor equipped to even begin the search.
- ◆ Compliance with the "reasonable effort to transfer" standard required of the health care provider is immeasurable and therefore obfuscates, delays, and impedes the process.
- ◆ Complete breakdown of the doctor-patient relationship occurs as the law pits families against health care providers.

Changes to the Futile Care Law Would:

- ◆ expand the 10-day period and require treatment of the patient until the transfer is effectuated;
- ◆ require hospitals to keep records of efforts made to transfer the patient; and
- ◆ allow doctors to maintain the right to transfer the patient if treatment conflicts with the doctor's judgment.

Legislative Purpose

- ◆ To safeguard the expressed wishes of the patient
- ◆ To improve the doctor-patient relationship
- ◆ To secure the rights of doctors to abstain from treating when doing so violates their personal code of ethics
- ◆ To protect vulnerable Texans from the withdrawal of life-sustaining treatment (involuntary euthanasia)
- ◆ To build public trust in hospitals by avoiding unfortunate public relations episodes
- ◆ To strengthen the legitimacy of advance directives



Kalilah was slated to have life-sustaining treatment removed on July 9, 2006; however, court negotiations yielded additional time for a transfer to be arranged to a long term care facility in Lubbock in August. Kalilah died naturally on Christmas Day.

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Frequently Asked Questions:

Are these families expecting unrealistic miracles?

No. Families are not expecting medical miracles; rather, they simply do not wish to be complicit in speeding the death of their ailing loved one.

Does treatment-pending-transfer burden the hospital with providing expensive end-of-life care?

No. When patients are accurately diagnosed as terminal and irreversible based on medical science (rather than subjective quality of life judgments), they usually pass away within months even while receiving sophisticated medical treatment. Should the patient live longer, an examination of the patient's original diagnosis should be made to determine if the futile care procedure should have been invoked in the first place.

Is there a shortage of long-term care facilities willing to accept patient transfers?

No. Bed availability, insurance constraints, or Medicaid eligibility can cause delays in transferring patients. However, when Texas Right to Life has assisted families, transfers for most patients were eventually found (but never within the 10-day allotment); only a few patients died before the transfer took place. Often the transfer is more readily secured if the initial facility assists the patient in achieving minimal health milestones.

Is the doctor making a medical decision or a quality of life judgment?

Under the current statute, application of the futility law process is not limited to terminal or irreversible patients. Doctors may invoke the statute on any patient, overriding personal life decisions that should rest with the patient and family.



Treatment was to be withdrawn from baby Daniel on May 19, 2006. Daniel's mother fought to protect his life, and consequently, a transfer was effectuated to a facility where she spends time with him.



Edith was denied a medically necessary feeding tube. She was eventually transferred to a facility that provided the feeding tube and then returned to her nursing home in stable health, at which she continued to enjoy daily visits with her daughter and son until her death on Thursday, February 15, 2007.



Andrea's treatment was to be withdrawn on April 29, 2006, before media and internet coverage prompted a temporary halt to the 10-day period. This extra time allowed a new doctor to assume her care, enabling Andrea to then pass away peacefully and naturally and surrounded by her family and friends.