

Procedure When Person Has Not Executed or Issued a Directive and Is Incompetent or Incapable of Communication

(Surrogate Decision that may include withholding or withdrawing life sustaining treatment)

The Advance Directives Act (see §166.039, Health and Safety Code)

"Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

"Irreversible condition" means a condition, injury or illness:

- a. that may be treated but is never cured or eliminated;
- b. that leaves a person unable to care for or make decisions for the person's own self; and
- c. that without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgement will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

If an adult qualified patient has not executed or issued a directive and is incompetent, or otherwise mentally or physically incapable of communication, the attending physician and the resident's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the resident.

If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and **one person**, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment.

- C the patient's spouse;
- C the patient's reasonably available adult children;
- C the patient's parents; or
- C the patient's nearest relative

A treatment decision must be based on knowledge of what the patient would desire, if known, and must be documented in the patient's medical record and signed by the attending physician.

If the patient does not have a legal guardian and a person listed in this section is not available, a treatment decision made under this section must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment.

A relative listed in this section who wishes to challenge a treatment decision made by other relatives under this section must apply for temporary guardianship under Section 875, Texas Probate Code. The court may waive applicable fees in that proceeding.

_____, has not executed or issued a directive and has no legal guardian or an agent under a medical power of attorney. The above named individual is incompetent, or otherwise mentally or physically incapable of communication. The following is a brief description of:

(1) the patient's physical and mental condition, including diagnoses and description of terminal illness:

(2) any treatment desires of the patient if known:

(3) physician or physician/family-determined treatment decisions:

Attending Physician _____ Date _____

Family Member Signature _____ Date _____

Relationship to Patient _____

Second Physician (if required) _____ Date _____