

Real Estate, Probate & Trust Law Section of the State Bar of Texas

2021 Proposed Legislation Relating to Medical Powers of Attorney

1. Section 1 of the proposed bill amends Subchapter D, Chapter 166, Health and Safety Code, by adding Section 166.1525, to provide direction to and protection for a health care provider if a principal has named co-agents in a medical power of attorney. This section provides a presumption that co-agents may act independently. When co-agents are authorized to act independently (based either on the statutory presumption or the terms of the MPOA), a health care provider must follow the directive of any co-agent unless there is a disagreement. If there is a disagreement, the health care provider must follow the directive of an alternate agent if the MPOA provides for one. If the MPOA requires joint agreement of the co-agents, the health care provider may follow or refuse to follow the directive of any co-agent if there is disagreement or if not all are available. The health care provider will have no civil or criminal liability for following or refusing to follow the directive in compliance with these rules.
2. Section 2 of the proposed bill amends Section 166.164, Health and Safety Code, to make the statutory form of the medical power of attorney permissible rather than mandatory. Any form of a medical power of attorney which is in writing, contains the principal's name, designates an agent, is dated, and is signed in the presence of two eligible witnesses or a notary public (that is, satisfies the Texas execution requirements), would be valid.
3. Section 3 of the proposed bill provides for an effective date of September 1, 2021.

REPTL has received no statements of position on these proposed changes, and has submitted these proposals to all sections and committees of the State Bar of Texas, as required by its Legislative Policy. If any comments are received, they will be forwarded to the State Bar.

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