

1 A bill to be entitled

2 An act relating to health care representatives;  
3 amending s. 743.0645, F.S.; conforming provisions to  
4 changes made by the act; amending s. 765.101, F.S.;  
5 defining terms for purposes of provisions relating to  
6 health care advanced directives; revising definitions  
7 to conform to changes made by the act; amending s.  
8 765.102, F.S.; revising legislative intent to include  
9 reference to surrogate authority that is not dependent  
10 on a determination of incapacity; amending s. 765.104,  
11 F.S.; conforming provisions to changes made by the  
12 act; amending s. 765.105, F.S.; conforming provisions  
13 to changes made by the act; providing an exception for  
14 a patient who has designated a surrogate to make  
15 health care decisions and receive health information  
16 without a determination of incapacity being required;  
17 amending ss. 765.1103 and 765.1105, F.S.; conforming  
18 provisions to changes made by the act; amending s.  
19 765.202, F.S.; revising provisions relating to the  
20 designation of health care surrogates; amending s.  
21 765.203, F.S.; revising the suggested form for  
22 designation of a health care surrogate; creating s.  
23 765.2035, F.S.; providing for the designation of  
24 health care surrogates for minors; providing for  
25 designation of an alternate surrogate; providing for  
26 decisionmaking if neither the designated surrogate nor

27 | the designated alternate surrogate is willing, able,  
28 | or reasonably available to make health care decisions  
29 | for the minor on behalf of the minor's principal;  
30 | authorizing designation of a separate surrogate to  
31 | consent to mental health treatment for a minor;  
32 | providing that the health care surrogate authorized to  
33 | make health care decisions for a minor is also the  
34 | minor's principal's choice to make decisions regarding  
35 | mental health treatment for the minor unless provided  
36 | otherwise; providing that a written designation of a  
37 | health care surrogate establishes a rebuttable  
38 | presumption of clear and convincing evidence of the  
39 | minor's principal's designation of the surrogate;  
40 | creating s. 765.2038, F.S.; providing a suggested form  
41 | for the designation of a health care surrogate for a  
42 | minor; amending s. 765.204, F.S.; conforming  
43 | provisions to changes made by the act; providing for  
44 | notification of incapacity of a principal; providing  
45 | that a health care provider may justifiably rely on  
46 | decisions made by a surrogate; providing for  
47 | situations when there are conflicting decisions  
48 | between surrogate and patient; amending s. 765.205,  
49 | F.S.; conforming provisions to changes made by the  
50 | act; amending ss. 765.302, 765.303, 765.304, 765.306,  
51 | 765.404, and 765.516, F.S.; conforming provisions to  
52 | changes made by the act; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 743.0645, Florida Statutes, are amended to read:

743.0645 Other persons who may consent to medical care or treatment of a minor.—

(1) As used in this section, the term:

(b) "Medical care and treatment" includes ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing, and well-child care, but does not include surgery, general anesthesia, provision of psychotropic medications, or other extraordinary procedures for which a separate court order, health care surrogate designation under s. 765.2035 executed after September 30, 2015, power of attorney executed after July 1, 2001, or informed consent as provided by law is required, except as provided in s. 39.407(3).

(2) Any of the following persons, in order of priority listed, may consent to the medical care or treatment of a minor who is not committed to the Department of Children and Families or the Department of Juvenile Justice or in their custody under chapter 39, chapter 984, or chapter 985 when, after a reasonable attempt, a person who has the power to consent as otherwise provided by law cannot be contacted by the treatment provider

79 and actual notice to the contrary has not been given to the  
 80 provider by that person:

81 (a) A health care surrogate designated under s. 765.2035  
 82 after September 30, 2015, or a person who possesses a power of  
 83 attorney to provide medical consent for the minor. A health care  
 84 surrogate designation under s. 765.2035 executed after September  
 85 30, 2015, and a power of attorney executed after July 1, 2001,  
 86 to provide medical consent for a minor includes the power to  
 87 consent to medically necessary surgical and general anesthesia  
 88 services for the minor unless such services are excluded by the  
 89 individual executing the health care surrogate for a minor or  
 90 power of attorney.

91 There shall be maintained in the treatment provider's records of  
 92 the minor documentation that a reasonable attempt was made to  
 93 contact the person who has the power to consent.

94 Section 2. Section 765.101, Florida Statutes, is amended  
 95 to read:

96 765.101 Definitions.—As used in this chapter:

97 (1) "Advance directive" means a witnessed written document  
 98 or oral statement in which instructions are given by a principal  
 99 or in which the principal's desires are expressed concerning any  
 100 aspect of the principal's health care or health information, and  
 101 includes, but is not limited to, the designation of a health  
 102 care surrogate, a living will, or an anatomical gift made  
 103 pursuant to part V of this chapter.

104 (2) "Attending physician" means the ~~primary~~ physician who

105 has primary responsibility for the treatment and care of the  
106 patient while the patient receives such treatment or care in a  
107 hospital as defined in s. 395.002(12).

108 (3) "Close personal friend" means any person 18 years of  
109 age or older who has exhibited special care and concern for the  
110 patient, and who presents an affidavit to the health care  
111 facility or to the primary ~~attending or treating~~ physician  
112 stating that he or she is a friend of the patient; is willing  
113 and able to become involved in the patient's health care; and  
114 has maintained such regular contact with the patient so as to be  
115 familiar with the patient's activities, health, and religious or  
116 moral beliefs.

117 (4) "End-stage condition" means an irreversible condition  
118 that is caused by injury, disease, or illness which has resulted  
119 in progressively severe and permanent deterioration, and which,  
120 to a reasonable degree of medical probability, treatment of the  
121 condition would be ineffective.

122 (5) "Health care" means care, services, or supplies  
123 related to the health of an individual and includes, but is not  
124 limited to, preventive, diagnostic, therapeutic, rehabilitative,  
125 maintenance, or palliative care, and counseling, service,  
126 assessment, or procedure with respect to the individual's  
127 physical or mental condition or functional status or that affect  
128 the structure or function of the individual's body.

129 ~~(6)-(5)~~ "Health care decision" means:

130 (a) Informed consent, refusal of consent, or withdrawal of

131 consent to any and all health care, including life-prolonging  
132 procedures and mental health treatment, unless otherwise stated  
133 in the advance directives.

134 (b) The decision to apply for private, public, government,  
135 or veterans' benefits to defray the cost of health care.

136 (c) The right of access to health information ~~all records~~  
137 of the principal reasonably necessary for a health care  
138 surrogate or proxy to make decisions involving health care and  
139 to apply for benefits.

140 (d) The decision to make an anatomical gift pursuant to  
141 part V of this chapter.

142 ~~(7)-(6)~~ "Health care facility" means a hospital, nursing  
143 home, hospice, home health agency, or health maintenance  
144 organization licensed in this state, or any facility subject to  
145 part I of chapter 394.

146 ~~(8)-(7)~~ "Health care provider" or "provider" means any  
147 person licensed, certified, or otherwise authorized by law to  
148 administer health care in the ordinary course of business or  
149 practice of a profession.

150 (9) "Health information" means any information, whether  
151 oral or recorded in any form or medium, as defined in 45 C.F.R.  
152 s. 160.103 and the Health Insurance Portability and  
153 Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended,  
154 that:

155 (a) Is created or received by a health care provider,  
156 health care facility, health plan, public health authority,

157 employer, life insurer, school or university, or health care  
158 clearinghouse; and

159 (b) Relates to the past, present, or future physical or  
160 mental health or condition of the principal; the provision of  
161 health care to the principal; or the past, present, or future  
162 payment for the provision of health care to the principal.

163 (10)-(8) "Incapacity" or "incompetent" means the patient is  
164 physically or mentally unable to communicate a willful and  
165 knowing health care decision. For the purposes of making an  
166 anatomical gift, the term also includes a patient who is  
167 deceased.

168 (11)-(9) "Informed consent" means consent voluntarily given  
169 by a person after a sufficient explanation and disclosure of the  
170 subject matter involved to enable that person to have a general  
171 understanding of the treatment or procedure and the medically  
172 acceptable alternatives, including the substantial risks and  
173 hazards inherent in the proposed treatment or procedures, and to  
174 make a knowing health care decision without coercion or undue  
175 influence.

176 (12)-(10) "Life-prolonging procedure" means any medical  
177 procedure, treatment, or intervention, including artificially  
178 provided sustenance and hydration, which sustains, restores, or  
179 supplants a spontaneous vital function. The term does not  
180 include the administration of medication or performance of  
181 medical procedure, when such medication or procedure is deemed  
182 necessary to provide comfort care or to alleviate pain.

183 (13)~~(11)~~ "Living will" or "declaration" means:

184 (a) A witnessed document in writing, voluntarily executed  
185 by the principal in accordance with s. 765.302; or

186 (b) A witnessed oral statement made by the principal  
187 expressing the principal's instructions concerning life-  
188 prolonging procedures.

189 (14) "Minor's principal" means a principal who is a  
190 natural guardian as defined in s. 744.301(1); legal custodian;  
191 or, subject to chapter 744, legal guardian of the person of a  
192 minor.

193 (15)~~(12)~~ "Persistent vegetative state" means a permanent  
194 and irreversible condition of unconsciousness in which there is:

195 (a) The absence of voluntary action or cognitive behavior  
196 of any kind.

197 (b) An inability to communicate or interact purposefully  
198 with the environment.

199 (16)~~(13)~~ "Physician" means a person licensed pursuant to  
200 chapter 458 or chapter 459.

201 (17) "Primary physician" means a physician designated by  
202 an individual or the individual's surrogate, proxy, or agent  
203 under a durable power of attorney as provided in chapter 709, to  
204 have primary responsibility for the individual's health care or,  
205 in the absence of a designation or if the designated physician  
206 is not reasonably available, a physician who undertakes the  
207 responsibility.

208 (18)~~(14)~~ "Principal" means a competent adult executing an



209 advance directive and on whose behalf health care decisions are  
210 to be made or health care information is to be received, or  
211 both.

212 (19)-(15) "Proxy" means a competent adult who has not been  
213 expressly designated to make health care decisions for a  
214 particular incapacitated individual, but who, nevertheless, is  
215 authorized pursuant to s. 765.401 to make health care decisions  
216 for such individual.

217 (20) "Reasonably available" means readily able to be  
218 contacted without undue effort and willing and able to act in a  
219 timely manner considering the urgency of the patient's health  
220 care needs.

221 (21)-(16) "Surrogate" means any competent adult expressly  
222 designated by a principal to make health care decisions and to  
223 receive health information. The principal may stipulate whether  
224 the authority of the surrogate to make health care decisions or  
225 to receive health information is exercisable immediately without  
226 the necessity for a determination of incapacity or only upon the  
227 principal's incapacity as provided in s. 765.204 ~~on behalf of~~  
228 ~~the principal upon the principal's incapacity.~~

229 (22)-(17) "Terminal condition" means a condition caused by  
230 injury, disease, or illness from which there is no reasonable  
231 medical probability of recovery and which, without treatment,  
232 can be expected to cause death.

233 Section 3. Subsections (3) through (6) of section 765.102,  
234 Florida Statutes, are renumbered as subsections (4) through (7),

235 respectively, present subsections (2) and (3) are amended, and a  
236 new subsection (3) is added to that section, to read:

237 765.102 Legislative findings and intent.—

238 (2) To ensure that such right is not lost or diminished by  
239 virtue of later physical or mental incapacity, the Legislature  
240 intends that a procedure be established to allow a person to  
241 plan for incapacity by executing a document or orally  
242 designating another person to direct the course of his or her  
243 health care or receive his or her health information, or both,  
244 ~~medical treatment~~ upon his or her incapacity. Such procedure  
245 should be less expensive and less restrictive than guardianship  
246 and permit a previously incapacitated person to exercise his or  
247 her full right to make health care decisions as soon as the  
248 capacity to make such decisions has been regained.

249 (3) The Legislature also recognizes that some competent  
250 adults may want to receive immediate assistance in making health  
251 care decisions or accessing health information, or both, without  
252 a determination of incapacity. The Legislature intends that a  
253 procedure be established to allow a person to designate a  
254 surrogate to make health care decisions or receive health  
255 information, or both, without the necessity for a determination  
256 of incapacity under this chapter.

257 (4)~~(3)~~ The Legislature recognizes that for some the  
258 administration of life-prolonging medical procedures may result  
259 in only a precarious and burdensome existence. In order to  
260 ensure that the rights and intentions of a person may be

261 respected even after he or she is no longer able to participate  
 262 actively in decisions concerning himself or herself, and to  
 263 encourage communication among such patient, his or her family,  
 264 and his or her physician, the Legislature declares that the laws  
 265 of this state recognize the right of a competent adult to make  
 266 an advance directive instructing his or her physician to  
 267 provide, withhold, or withdraw life-prolonging procedures, or to  
 268 designate another to make the health care ~~treatment~~ decision for  
 269 him or her in the event that such person should become  
 270 incapacitated and unable to personally direct his or her health  
 271 ~~medical~~ care.

272 Section 4. Subsection (1) of section 765.104, Florida  
 273 Statutes, is amended to read:

274 765.104 Amendment or revocation.—

275 (1) An advance directive ~~or designation of a surrogate~~ may  
 276 be amended or revoked at any time by a competent principal:

277 (a) By means of a signed, dated writing;

278 (b) By means of the physical cancellation or destruction  
 279 of the advance directive by the principal or by another in the  
 280 principal's presence and at the principal's direction;

281 (c) By means of an oral expression of intent to amend or  
 282 revoke; or

283 (d) By means of a subsequently executed advance directive  
 284 that is materially different from a previously executed advance  
 285 directive.

286 Section 5. Section 765.105, Florida Statutes, is amended

287 to read:

288 765.105 Review of surrogate or proxy's decision.—

289 (1) The patient's family, the health care facility, or the  
290 primary attending physician, or any other interested person who  
291 may reasonably be expected to be directly affected by the  
292 surrogate or proxy's decision concerning any health care  
293 decision may seek expedited judicial intervention pursuant to  
294 rule 5.900 of the Florida Probate Rules, if that person  
295 believes:

296 (a)~~(1)~~ The surrogate or proxy's decision is not in accord  
297 with the patient's known desires or ~~the provisions of this~~  
298 chapter;

299 (b)~~(2)~~ The advance directive is ambiguous, or the patient  
300 has changed his or her mind after execution of the advance  
301 directive;

302 (c)~~(3)~~ The surrogate or proxy was improperly designated or  
303 appointed, or the designation of the surrogate is no longer  
304 effective or has been revoked;

305 (d)~~(4)~~ The surrogate or proxy has failed to discharge  
306 duties, or incapacity or illness renders the surrogate or proxy  
307 incapable of discharging duties;

308 (e)~~(5)~~ The surrogate or proxy has abused his or her  
309 powers; or

310 (f)~~(6)~~ The patient has sufficient capacity to make his or  
311 her own health care decisions.

312 (2) This section does not apply to a patient who is not

313 incapacitated and who has designated a surrogate who has  
314 immediate authority to make health care decisions and receive  
315 health information, or both, on behalf of the patient.

316 Section 6. Subsection (1) of section 765.1103, Florida  
317 Statutes, is amended to read:

318 765.1103 Pain management and palliative care.—

319 (1) A patient shall be given information concerning pain  
320 management and palliative care when he or she discusses with the  
321 primary attending or treating physician, or such physician's  
322 designee, the diagnosis, planned course of treatment,  
323 alternatives, risks, or prognosis for his or her illness. If the  
324 patient is incapacitated, the information shall be given to the  
325 patient's health care surrogate or proxy, court-appointed  
326 guardian as provided in chapter 744, or attorney in fact under a  
327 durable power of attorney as provided in chapter 709. The court-  
328 appointed guardian or attorney in fact must have been delegated  
329 authority to make health care decisions on behalf of the  
330 patient.

331 Section 7. Section 765.1105, Florida Statutes, is amended  
332 to read:

333 765.1105 Transfer of a patient.—

334 (1) A health care provider or facility that refuses to  
335 comply with a patient's advance directive, or the treatment  
336 decision of his or her surrogate or proxy, shall make reasonable  
337 efforts to transfer the patient to another health care provider  
338 or facility that will comply with the directive or treatment

339 decision. This chapter does not require a health care provider  
 340 or facility to commit any act which is contrary to the  
 341 provider's or facility's moral or ethical beliefs, if the  
 342 patient:

343 (a) Is not in an emergency condition; and

344 (b) Has received written information upon admission  
 345 informing the patient of the policies of the health care  
 346 provider or facility regarding such moral or ethical beliefs.

347 (2) A health care provider or facility that is unwilling  
 348 to carry out the wishes of the patient or the treatment decision  
 349 of his or her surrogate or proxy because of moral or ethical  
 350 beliefs must within 7 days either:

351 (a) Transfer the patient to another health care provider  
 352 or facility. The health care provider or facility shall pay the  
 353 costs for transporting the patient to another health care  
 354 provider or facility; or

355 (b) If the patient has not been transferred, carry out the  
 356 wishes of the patient or the patient's surrogate or proxy,  
 357 unless ~~the provisions of s. 765.105~~ applies ~~apply~~.

358 Section 8. Subsections (1), (3), and (4) of section  
 359 765.202, Florida Statutes, are amended, subsections (6) and (7)  
 360 are renumbered as subsections (7) and (8), respectively, and a  
 361 new subsection (6) is added to that section, to read:

362 765.202 Designation of a health care surrogate.—

363 (1) A written document designating a surrogate to make  
 364 health care decisions for a principal or receive health

365 information on behalf of a principal, or both, shall be signed  
366 by the principal in the presence of two subscribing adult  
367 witnesses. A principal unable to sign the instrument may, in the  
368 presence of witnesses, direct that another person sign the  
369 principal's name as required herein. An exact copy of the  
370 instrument shall be provided to the surrogate.

371 (3) A document designating a health care surrogate may  
372 also designate an alternate surrogate provided the designation  
373 is explicit. The alternate surrogate may assume his or her  
374 duties as surrogate for the principal if the original surrogate  
375 is not willing, able, or reasonably available ~~unwilling or~~  
376 ~~unable~~ to perform his or her duties. The principal's failure to  
377 designate an alternate surrogate shall not invalidate the  
378 designation of a surrogate.

379 (4) If neither the designated surrogate nor the designated  
380 alternate surrogate is willing, able, or reasonably available  
381 ~~able or willing~~ to make health care decisions on behalf of the  
382 principal and in accordance with the principal's instructions,  
383 the health care facility may seek the appointment of a proxy  
384 pursuant to part IV.

385 (6) A principal may stipulate in the document that the  
386 authority of the surrogate to receive health information or make  
387 health care decisions or both is exercisable immediately without  
388 the necessity for a determination of incapacity as provided in  
389 s. 765.204.

390 Section 9. Section 765.203, Florida Statutes, is amended

391 to read:

392 765.203 Suggested form of designation.—A written  
 393 designation of a health care surrogate executed pursuant to this  
 394 chapter may, but need not be, in the following form:

395 DESIGNATION OF HEALTH CARE SURROGATE

396 I, ...(name)..., designate as my health care surrogate under s.  
 397 765.202, Florida Statutes:

398  
 399 Name: ...(name of health care surrogate)...

400 Address: ...(address)...

401 Phone: ...(telephone)...

402  
 403 If my health care surrogate is not willing, able, or reasonably  
 404 available to perform his or her duties, I designate as my  
 405 alternate health care surrogate:

406  
 407 Name: ...(name of alternate health care surrogate)...

408 Address: ...(address)...

409 Phone: ...(telephone)...

410  
 411 INSTRUCTIONS FOR HEALTH CARE

412 I authorize my health care surrogate to:

413 ...(Initial here)... Receive any of my health information,  
 414 whether oral or recorded in any form or medium, that:

415 1. Is created or received by a health care provider,  
 416 health care facility, health plan, public health authority,



417 employer, life insurer, school or university, or health care  
418 clearinghouse; and

419 2. Relates to my past, present, or future physical or  
420 mental health or condition; the provision of health care to me;  
421 or the past, present, or future payment for the provision of  
422 health care to me.

423 I further authorize my health care surrogate to:

424 ...(Initial here)... Make all health care decisions for me,  
425 which means he or she has the authority to:

426 1. Provide informed consent, refusal of consent, or  
427 withdrawal of consent to any and all of my health care,  
428 including life-prolonging procedures.

429 2. Apply on my behalf for private, public, government, or  
430 veterans' benefits to defray the cost of health care.

431 3. Access my health information reasonably necessary for  
432 the health care surrogate to make decisions involving my health  
433 care and to apply for benefits for me.

434 4. Decide to make an anatomical gift pursuant to part V of  
435 chapter 765, Florida Statutes.

436 ...(Initial here)... Specific instructions and  
437 restrictions: .....  
438 .....  
439 .....

441 To the extent I am capable of understanding, my health care  
442 surrogate shall keep me reasonably informed of all decisions

443 that he or she has made on my behalf and matters concerning me.

444  
 445 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY  
 446 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA  
 447 STATUTES.

448  
 449 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT  
 450 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND  
 451 THIS DESIGNATION BY:

452 (1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES  
 453 MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;

454 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN  
 455 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY  
 456 DIRECTION;

457 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE  
 458 THIS DESIGNATION; OR

459 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT  
 460 FROM THIS DESIGNATION.

461  
 462 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY  
 463 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN  
 464 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE  
 465 FOLLOWING BOXES:

466  
 467 IF I INITIAL THIS BOX [...], MY HEALTH CARE SURROGATE'S  
 468 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT

469 IMMEDIATELY.  
 470  
 471 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
 472 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT  
 473 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,  
 474 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER  
 475 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERCEDE  
 476 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE  
 477 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

478  
 479 SIGNATURES: Sign and date the form here:  
 480 ...(date)... ...(sign your name)...  
 481 ...(address)... ...(print your name)...  
 482 ...(city)... ...(state)...

483  
 484 SIGNATURES OF WITNESSES:  
 485 First witness Second witness  
 486 ...(print name)... ...(print name)...  
 487 ...(address)... ...(address)...  
 488 ...(city)... ...(state)... ...(city)... ...(state)...  
 489 ...(signature of witness)... ...(signature of witness)...  
 490 ...(date)... ...(date)...

491 Name:.....(Last).....(First).....(Middle Initial).....

492 ~~In the event that I have been determined to be~~  
 493 ~~incapacitated to provide informed consent for medical treatment~~  
 494 ~~and surgical and diagnostic procedures, I wish to designate as~~

495 ~~my surrogate for health care decisions:~~

496 ~~Name:.....~~

497 ~~Address:.....~~

498  
~~..... Zip Code:.....~~

499  
500 ~~Phone:.....~~

501 ~~If my surrogate is unwilling or unable to perform his or~~  
502 ~~her duties, I wish to designate as my alternate surrogate:~~

503 ~~Name:.....~~

504 ~~Address:.....~~

505  
~~..... Zip Code:.....~~

506  
507 ~~Phone:.....~~

508 ~~I fully understand that this designation will permit my~~  
509 ~~designee to make health care decisions and to provide, withhold,~~  
510 ~~or withdraw consent on my behalf; to apply for public benefits~~  
511 ~~to defray the cost of health care; and to authorize my admission~~  
512 ~~to or transfer from a health care facility.~~

513 ~~Additional instructions (optional):.....~~  
514 ~~.....~~  
515 ~~.....~~  
516 ~~.....~~

517 ~~I further affirm that this designation is not being made as~~  
518 ~~a condition of treatment or admission to a health care facility.~~

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519 ~~I will notify and send a copy of this document to the following~~  
520 ~~persons other than my surrogate, so they may know who my~~  
521 ~~surrogate is.~~

522 Name:.....

523 Name:.....

524 .....

525 .....

526 Signed:.....

527 Date:.....

528

Witnesses:            1.——

529

                          2.——

530

531            Section 10. Section 765.2035, Florida Statutes, is created  
532 to read:

533            765.2035 Designation of a health care surrogate for a  
534 minor.—

535            (1) A natural guardian as defined in s. 744.301(1), legal  
536 custodian, or legal guardian of the person of a minor may  
537 designate a competent adult to serve as a surrogate to make  
538 health care decisions for the minor. Such designation shall be  
539 made by a written document signed by the minor's principal in  
540 the presence of two subscribing adult witnesses. If a minor's  
541 principal is unable to sign the instrument, the principal may,  
542 in the presence of witnesses, direct that another person sign

543 the minor's principal's name as required by this subsection. An  
544 exact copy of the instrument shall be provided to the surrogate.

545 (2) The person designated as surrogate may not act as  
546 witness to the execution of the document designating the health  
547 care surrogate.

548 (3) A document designating a health care surrogate may  
549 also designate an alternate surrogate; however, such designation  
550 must be explicit. The alternate surrogate may assume his or her  
551 duties as surrogate if the original surrogate is not willing,  
552 able, or reasonably available to perform his or her duties. The  
553 minor's principal's failure to designate an alternate surrogate  
554 does not invalidate the designation.

555 (4) If neither the designated surrogate or the designated  
556 alternate surrogate is willing, able, or reasonably available to  
557 make health care decisions for the minor on behalf of the  
558 minor's principal and in accordance with the minor's principal's  
559 instructions, s. 743.0645(2) shall apply as if no surrogate had  
560 been designated.

561 (5) A natural guardian as defined in s. 744.301(1), legal  
562 custodian, or legal guardian of the person of a minor may  
563 designate a separate surrogate to consent to mental health  
564 treatment for the minor. However, unless the document  
565 designating the health care surrogate expressly states  
566 otherwise, the court shall assume that the health care surrogate  
567 authorized to make health care decisions for a minor under this

568 chapter is also the minor's principal's choice to make decisions  
569 regarding mental health treatment for the minor.

570 (6) Unless the document states a time of termination, the  
571 designation shall remain in effect until revoked by the minor's  
572 principal. An otherwise valid designation of a surrogate for a  
573 minor shall not be invalid solely because it was made before the  
574 birth of the minor.

575 (7) A written designation of a health care surrogate  
576 executed pursuant to this section establishes a rebuttable  
577 presumption of clear and convincing evidence of the minor's  
578 principal's designation of the surrogate and becomes effective  
579 pursuant to s. 743.0645(2) (a).

580 Section 11. Section 765.2038, Florida Statutes, is created  
581 to read:

582 765.2038 Designation of health care surrogate for a minor;  
583 suggested form.—A written designation of a health care surrogate  
584 for a minor executed pursuant to this chapter may, but need to  
585 be, in the following form:

586 DESIGNATION OF HEALTH CARE SURROGATE  
587 FOR MINOR

588 I/We, ...(name/names)..., the [....] natural guardian(s)  
589 as defined in s. 744.301(1), Florida Statutes; [....] legal  
590 custodian(s); [....] legal guardian(s) [check one] of the  
591 following minor(s):

592 .....;  
593 .....

594 .....;

595 .....,

596

597 pursuant to s. 765.2035, Florida Statutes, designate the  
598 following person to act as my/our surrogate for health care  
599 decisions for such minor(s) in the event that I/we am/are not  
600 able or reasonably available to provide consent for medical  
601 treatment and surgical and diagnostic procedures:

602

603 Name: ... (name)...

604 Address: ... (address)...

605 Zip Code: ... (zip code)...

606 Phone: ... (telephone)...

607

608 If my/our designated health care surrogate for a minor is  
609 not willing, able, or reasonably available to perform his or her  
610 duties, I/we designate the following person as my/our alternate  
611 health care surrogate for a minor:

612

613 Name: ... (name)...

614 Address: ... (address)...

615 Zip Code: ... (zip code)...

616 Phone: ... (telephone)...

617

618 I/We authorize and request all physicians, hospitals, or  
619 other providers of medical services to follow the instructions



620 of my/our surrogate or alternate surrogate, as the case may be,  
 621 at any time and under any circumstances whatsoever, with regard  
 622 to medical treatment and surgical and diagnostic procedures for  
 623 a minor, provided the medical care and treatment of any minor is  
 624 on the advice of a licensed physician.

625  
 626 I/We fully understand that this designation will permit  
 627 my/our designee to make health care decisions for a minor and to  
 628 provide, withhold, or withdraw consent on my/our behalf, to  
 629 apply for public benefits to defray the cost of health care, and  
 630 to authorize the admission or transfer of a minor to or from a  
 631 health care facility.

632  
 633 I/We will notify and send a copy of this document to the  
 634 following person(s) other than my/our surrogate, so that they  
 635 may know the identity of my/our surrogate:

636  
 637 Name: ... (name)...

638 Name: ... (name)...

639  
 640 Signed: ... (signature)...

641 Date: ... (date)...

642  
 643 WITNESSES:

644 1. ... (witness)...

645 2. ... (witness)...

646 Section 12. Section 765.204, Florida Statutes, is amended  
647 to read:

648 765.204 Capacity of principal; procedure.—

649 (1) A principal is presumed to be capable of making health  
650 care decisions for herself or himself unless she or he is  
651 determined to be incapacitated. Incapacity may not be inferred  
652 from the person's voluntary or involuntary hospitalization for  
653 mental illness or from her or his intellectual disability.

654 (2) If a principal's capacity to make health care  
655 decisions for herself or himself or provide informed consent is  
656 in question, the primary or attending physician shall evaluate  
657 the principal's capacity and, if the evaluating physician  
658 concludes that the principal lacks capacity, enter that  
659 evaluation in the principal's medical record. If the evaluating  
660 ~~attending~~ physician has a question as to whether the principal  
661 lacks capacity, another physician shall also evaluate the  
662 principal's capacity, and if the second physician agrees that  
663 the principal lacks the capacity to make health care decisions  
664 or provide informed consent, the health care facility shall  
665 enter both physician's evaluations in the principal's medical  
666 record. If the principal has designated a health care surrogate  
667 or has delegated authority to make health care decisions to an  
668 attorney in fact under a durable power of attorney, the health  
669 care facility shall notify such surrogate or attorney in fact in  
670 writing that her or his authority under the instrument has  
671 commenced, as provided in chapter 709 or s. 765.203. If an

672 attending physician determines that the principal lacks  
673 capacity, the hospital in which the attending physician made  
674 such a determination shall notify the principal's primary  
675 physician of the determination.

676 (3) The surrogate's authority commences either ~~shall~~  
677 ~~commence~~ upon a determination under subsection (2) that the  
678 principal lacks capacity or upon a stipulation of such authority  
679 pursuant to s. 765.101(21). ~~and~~ Such authority remains ~~shall~~  
680 ~~remain~~ in effect until a determination that the principal has  
681 regained such capacity, if the authority commenced as a result  
682 of incapacity, or until the authority is revoked, if the  
683 authority commenced immediately pursuant to s. 765.101(21). Upon  
684 commencement of the surrogate's authority, a surrogate who is  
685 not the principal's spouse shall notify the principal's spouse  
686 or adult children of the principal's designation of the  
687 surrogate. Except if the principal provided immediately  
688 exercisable authority to the surrogate pursuant to s.  
689 765.101(21), in the event that the primary or attending  
690 physician determines that the principal has regained capacity,  
691 the authority of the surrogate shall cease, but recommences  
692 ~~shall recommence~~ if the principal subsequently loses capacity as  
693 determined pursuant to this section. A health care provider is  
694 not liable for relying upon health care decisions made by a  
695 surrogate while the principal lacks capacity. At any time when a  
696 principal lacks capacity, a health care decision made on the  
697 principal's behalf by a surrogate is effective to the same

698 extent as a decision made by the principal. If a principal  
699 possesses capacity, health care decisions of the principal take  
700 precedence over decisions made by the surrogate that present a  
701 material conflict.

702 (4) Notwithstanding subsections (2) and (3), if the  
703 principal has designated a health care surrogate and has  
704 stipulated that the authority of the surrogate is to take effect  
705 immediately, or has appointed an agent under a durable power of  
706 attorney as provided in chapter 709 to make health care  
707 decisions for the principal, the health care facility shall  
708 notify such surrogate or agent in writing when a determination  
709 of incapacity has been entered into the principal's medical  
710 record.

711 (5)-(4) A determination made pursuant to this section that  
712 a principal lacks capacity to make health care decisions shall  
713 not be construed as a finding that a principal lacks capacity  
714 for any other purpose.

715 (6)-(5) If In the event the surrogate is required to  
716 consent to withholding or withdrawing life-prolonging  
717 procedures, ~~the provisions of part III applies shall apply.~~

718 Section 13. Paragraph (d) of subsection (1) and subsection  
719 (2) of section 765.205, Florida Statutes, are amended to read:

720 765.205 Responsibility of the surrogate.—

721 (1) The surrogate, in accordance with the principal's  
722 instructions, unless such authority has been expressly limited  
723 by the principal, shall:

724 (d) Be provided access to the appropriate health  
 725 information ~~medical records~~ of the principal.

726 (2) The surrogate may authorize the release of health  
 727 information ~~and medical records~~ to appropriate persons to ensure  
 728 the continuity of the principal's health care and may authorize  
 729 the admission, discharge, or transfer of the principal to or  
 730 from a health care facility or other facility or program  
 731 licensed under chapter 400 or chapter 429.

732 Section 14. Subsection (2) of section 765.302, Florida  
 733 Statutes, is amended to read:

734 765.302 Procedure for making a living will; notice to  
 735 physician.—

736 (2) It is the responsibility of the principal to provide  
 737 for notification to her or his primary ~~attending or treating~~  
 738 physician that the living will has been made. In the event the  
 739 principal is physically or mentally incapacitated at the time  
 740 the principal is admitted to a health care facility, any other  
 741 person may notify the physician or health care facility of the  
 742 existence of the living will. A primary ~~An attending or treating~~  
 743 physician or health care facility which is so notified shall  
 744 promptly make the living will or a copy thereof a part of the  
 745 principal's medical records.

746 Section 15. Subsection (1) of section 765.303, Florida  
 747 Statutes, is amended to read:

748 765.303 Suggested form of a living will.—

749 (1) A living will may, BUT NEED NOT, be in the following

750 form:

751 Living Will

752 Declaration made this .... day of ....., ...(year)..., I,  
 753 ....., willfully and voluntarily make known my desire that my  
 754 dying not be artificially prolonged under the circumstances set  
 755 forth below, and I do hereby declare that, if at any time I am  
 756 incapacitated and

757 ...(initial)... I have a terminal condition

758 or ...(initial)... I have an end-stage condition

759 or ...(initial)... I am in a persistent vegetative state

760 and if my primary ~~attending or treating~~ physician and another  
 761 consulting physician have determined that there is no reasonable  
 762 medical probability of my recovery from such condition, I direct  
 763 that life-prolonging procedures be withheld or withdrawn when  
 764 the application of such procedures would serve only to prolong  
 765 artificially the process of dying, and that I be permitted to  
 766 die naturally with only the administration of medication or the  
 767 performance of any medical procedure deemed necessary to provide  
 768 me with comfort care or to alleviate pain.

769 It is my intention that this declaration be honored by my  
 770 family and physician as the final expression of my legal right  
 771 to refuse medical or surgical treatment and to accept the  
 772 consequences for such refusal.

773 In the event that I have been determined to be unable to  
 774 provide express and informed consent regarding the withholding,  
 775 withdrawal, or continuation of life-prolonging procedures, I

776 wish to designate, as my surrogate to carry out the provisions  
777 of this declaration:

778 Name:.....

779 Address:.....

780

..... Zip Code:.....

781

782 Phone:.....

783 I understand the full import of this declaration, and I am  
784 emotionally and mentally competent to make this declaration.

785 Additional Instructions (optional):

786 .....

787 .....

788 .....

789 .....(Signed).....

790 .....Witness.....

791 .....Address.....

792 .....Phone.....

793 .....Witness.....

794 .....Address.....

795 .....Phone.....

796 Section 16. Subsection (1) of section 765.304, Florida  
797 Statutes, is amended to read:

798 765.304 Procedure for living will.—

799 (1) If a person has made a living will expressing his or  
800 her desires concerning life-prolonging procedures, but has not

801 designated a surrogate to execute his or her wishes concerning  
802 life-prolonging procedures or designated a surrogate under part  
803 II, the person's primary ~~attending~~ physician may proceed as  
804 directed by the principal in the living will. In the event of a  
805 dispute or disagreement concerning the primary ~~attending~~  
806 physician's decision to withhold or withdraw life-prolonging  
807 procedures, the primary ~~attending~~ physician shall not withhold  
808 or withdraw life-prolonging procedures pending review under s.  
809 765.105. If a review of a disputed decision is not sought within  
810 7 days following the primary ~~attending~~ physician's decision to  
811 withhold or withdraw life-prolonging procedures, the primary  
812 ~~attending~~ physician may proceed in accordance with the  
813 principal's instructions.

814 Section 17. Section 765.306, Florida Statutes, is amended  
815 to read:

816 765.306 Determination of patient condition.—In determining  
817 whether the patient has a terminal condition, has an end-stage  
818 condition, or is in a persistent vegetative state or may recover  
819 capacity, or whether a medical condition or limitation referred  
820 to in an advance directive exists, the patient's primary  
821 ~~attending or treating~~ physician and at least one other  
822 consulting physician must separately examine the patient. The  
823 findings of each such examination must be documented in the  
824 patient's medical record and signed by each examining physician  
825 before life-prolonging procedures may be withheld or withdrawn.

826 Section 18. Section 765.404, Florida Statutes, is amended



827 to read:

828           765.404 Persistent vegetative state.—For persons in a  
829 persistent vegetative state, as determined by the person's  
830 primary attending physician in accordance with currently  
831 accepted medical standards, who have no advance directive and  
832 for whom there is no evidence indicating what the person would  
833 have wanted under such conditions, and for whom, after a  
834 reasonably diligent inquiry, no family or friends are available  
835 or willing to serve as a proxy to make health care decisions for  
836 them, life-prolonging procedures may be withheld or withdrawn  
837 under the following conditions:

838           (1) The person has a judicially appointed guardian  
839 representing his or her best interest with authority to consent  
840 to medical treatment; and

841           (2) The guardian and the person's primary attending  
842 physician, in consultation with the medical ethics committee of  
843 the facility where the patient is located, conclude that the  
844 condition is permanent and that there is no reasonable medical  
845 probability for recovery and that withholding or withdrawing  
846 life-prolonging procedures is in the best interest of the  
847 patient. If there is no medical ethics committee at the  
848 facility, the facility must have an arrangement with the medical  
849 ethics committee of another facility or with a community-based  
850 ethics committee approved by the Florida Bio-ethics Network. The  
851 ethics committee shall review the case with the guardian, in  
852 consultation with the person's primary attending physician, to

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853 determine whether the condition is permanent and there is no  
854 reasonable medical probability for recovery. The individual  
855 committee members and the facility associated with an ethics  
856 committee shall not be held liable in any civil action related  
857 to the performance of any duties required in this subsection.

858 Section 19. Paragraph (c) of subsection (1) of section  
859 765.516, Florida Statutes, is amended to read:

860 765.516 Donor amendment or revocation of anatomical gift.—

861 (1) A donor may amend the terms of or revoke an anatomical  
862 gift by:

863 (c) A statement made during a terminal illness or injury  
864 addressed to the primary ~~an attending~~ physician, who must  
865 communicate the revocation of the gift to the procurement  
866 organization.

867 Section 20. This act shall take effect October 1, 2015.