

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Judiciary offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. End-of-life care.--

(1)(a) The Legislature finds that Florida, as the fourth most populous state, is highly diverse with regard to race, ethnicity, urban and rural locales, religious practices, and cultural traditions. Florida has the largest percentage of elderly residents, the third largest incidence of AIDS, and the fourth highest death rates from heart disease and chronic obstructive pulmonary disease in the nation.

(b) The Legislature finds that the Panel for the Study of End-of-Life Care has recommended policies that will assure the citizens of this state the highest quality of compassionate, competent, and adequate end-of-life care.

(c) The Legislature finds that all persons should have access to effective pain management and palliative care; that adequate management of pain and other distressing symptoms at

Amendment No. 01 (for drafter's use only)

1 the end-of-life should be available; and that all settings
2 that care for seriously ill patients should address the
3 emotional and spiritual needs of such patients. The
4 Legislature finds that education of physicians and other
5 health care providers is necessary to assure that patients in
6 pain are assessed regularly and that their pain is treated
7 aggressively without fear of undue regulatory or legal action.

8 (d) The Legislature finds that an individual's
9 experience of death and dying, and preferences about
10 end-of-life care, are rooted in ethnic and cultural values and
11 beliefs. The Legislature finds that social, health, and
12 education practitioners must be trained to understand work
13 within different cultural parameters.

14 (e) The Legislature finds that to provide better pain
15 management, health care providers are to be encouraged to add
16 the assessment of pain as a "fifth vital sign." Further, the
17 Legislature intends that in accordance with standard and
18 accepted medical and ethical principles, the use of
19 pharmacological substances with the intent of alleviating or
20 eliminating pain and other discomfort is encouraged. Such use
21 should not be regarded as legally blameworthy, even if
22 appropriate pain control occurs during, and so precedes the
23 outcome of, the dying process.

24 (f) The Legislature finds that the State Supreme Court
25 has declared that, based on the constitutional right to
26 privacy, competent adults can express their wishes to receive,
27 refuse, withhold, or withdraw any medical treatment and that
28 right continues even when a person becomes incapacitated.

29 (2) The Secretary of Health is authorized to develop
30 and implement up to two demonstration projects to evaluate
31 strategies recommended by the Panel for the Study of

Amendment No. 01 (for drafter's use only)

1 End-of-Life Care. The Department of Health is authorized to
2 accept for that purpose any special grant of money, services,
3 property, gifts, or donations from any organization, medical
4 school, or Federal Government agency, and to apply for grants
5 to support the demonstration projects. The secretary shall
6 report to the President of the Senate, the Speaker of the
7 House of Representatives, and the majority and minority
8 leaders and relevant substantive committees of both chambers,
9 on the demonstration projects, no later than January 30 of
10 each year.

11 (3) The Chancellor of the State University System is
12 requested to convene a working group composed of one
13 representative from each of the Boards of Medicine,
14 Osteopathic Medicine, Nursing, Pharmacy, Nursing Home
15 Administrators, and Social Work, and the chairs of the four
16 medical schools' curriculum committees, to review available
17 curricula for end-of-life care and make recommendations
18 through the respective boards for content and materials to be
19 incorporated into the basic curriculum of each medical school,
20 school of social work, and allied health discipline.

21 Section 2. Paragraph (1) is added to subsection (3) of
22 section 395.1041, Florida Statutes, 1998 Supplement, to read:

23 395.1041 Access to emergency services and care.--

24 (3) EMERGENCY SERVICES; DISCRIMINATION; LIABILITY OF
25 FACILITY OR HEALTH CARE PERSONNEL.--

26 (1) Hospital emergency services personnel may withhold
27 or withdraw cardiopulmonary resuscitation if presented with an
28 order not to resuscitate executed pursuant to s. 401.45.
29 Facility staff and facilities shall not be subject to criminal
30 prosecution or civil liability, nor be considered to have
31 engaged in negligent or unprofessional conduct, for

Amendment No. 01 (for drafter's use only)

1 withholding or withdrawing cardiopulmonary resuscitation
2 pursuant to such an order.

3 Section 3. Section 400.142, Florida Statutes, is
4 amended to read:

5 400.142 Emergency medication kits; orders not to
6 resuscitate.--

7 (1) Other provisions of this chapter or of chapter
8 465, chapter 499, or chapter 893 to the contrary
9 notwithstanding, each nursing home operating pursuant to a
10 license issued by the agency may maintain an emergency
11 medication kit for the purpose of storing medicinal drugs to
12 be administered under emergency conditions to residents
13 residing in such facility.

14 (2) The agency shall adopt such rules as it may deem
15 appropriate to the effective implementation of this act,
16 including, but not limited to, rules which:

17 (a) Define the term "emergency medication kit."

18 (b) Describe the medicinal drugs eligible to be placed
19 in emergency medication kits.

20 (c) Establish requirements for the storing of
21 medicinal drugs in emergency medication kits and the
22 maintenance of records with respect thereto.

23 (d) Establish requirements for the administration of
24 medicinal drugs to residents under emergency conditions from
25 emergency medication kits.

26 (3) Facility staff may withhold or withdraw
27 cardiopulmonary resuscitation if presented with an order not
28 to resuscitate executed pursuant to s. 401.45. The agency
29 shall adopt rules providing for the implementation of such
30 orders. Facility staff and facilities shall not be subject to
31 criminal prosecution or civil liability, nor be considered to

Amendment No. 01 (for drafter's use only)

1 have engaged in negligent or unprofessional conduct, for
2 withholding or withdrawing cardiopulmonary resuscitation
3 pursuant to such an order and rules adopted by the agency.

4 Section 4. Section 400.4255, Florida Statutes, is
5 amended to read:

6 400.4255 Use of ~~licensed~~ personnel; emergency care.--

7 (1)(a) Persons under contract to the facility,
8 facility staff, or volunteers, who are licensed according to
9 chapter 464, or those persons exempt under s. 464.022(1), and
10 others as defined by rule, may administer medications to
11 residents, take residents' vital signs, manage individual
12 weekly pill organizers for residents who self-administer
13 medication, give prepackaged enemas ordered by a physician,
14 observe residents, document observations on the appropriate
15 resident's record, report observations to the resident's
16 physician, and contract or allow residents or a resident's
17 representative, designee, surrogate, guardian, or attorney in
18 fact to contract with a third party, provided residents meet
19 the criteria for appropriate placement as defined in s.
20 400.426. Nursing assistants certified pursuant to s. 400.211
21 may take residents' vital signs as directed by a licensed
22 nurse or physician.

23 (b) All staff in facilities licensed under this part
24 shall exercise their professional responsibility to observe
25 residents, to document observations on the appropriate
26 resident's record, and to report the observations to the
27 resident's physician. However, the owner or administrator of
28 the facility shall be responsible for determining that the
29 resident receiving services is appropriate for residence in
30 the facility.

31 (c) In an emergency situation, licensed personnel may

Amendment No. 01 (for drafter's use only)

1 carry out their professional duties pursuant to chapter 464
2 until emergency medical personnel assume responsibility for
3 care.

4 (2) In facilities licensed to provide extended
5 congregate care, persons under contract to the facility,
6 facility staff, or volunteers, who are licensed according to
7 chapter 464, or those persons exempt under s. 464.022(1), or
8 those persons certified as nursing assistants pursuant to s.
9 400.211, may also perform all duties within the scope of their
10 license or certification, as approved by the facility
11 administrator and pursuant to this part.

12 (3) Facility staff may withhold or withdraw
13 cardiopulmonary resuscitation if presented with an order not
14 to resuscitate executed pursuant to s. 401.45. The department
15 shall adopt rules providing for the implementation of such
16 orders. Facility staff and facilities shall not be subject to
17 criminal prosecution or civil liability, nor be considered to
18 have engaged in negligent or unprofessional conduct, for
19 withholding or withdrawing cardiopulmonary resuscitation
20 pursuant to such an order and rules adopted by the department.

21 Section 5. Section 400.487, Florida Statutes, is
22 amended to read:

23 400.487 Patient assessment; establishment and review
24 of plan of care; provision of services; orders not to
25 resuscitate.--

26 (1) The home health agency providing care and
27 treatment must make an assessment of the patient's needs
28 within 48 hours after the start of services.

29 (2) The attending physician for a patient receiving
30 care or treatment provided by a licensed nurse or by a
31 physical, occupational, or speech therapist must establish a

Amendment No. 01 (for drafter's use only)

1 plan of care for the patient on behalf of the home health
2 agency that provides services to the patient. The original
3 plan of treatment must be signed by the physician and
4 reviewed, at least every 62 days or more frequently if the
5 patient's illness requires, by the physician in consultation
6 with home health agency personnel that provide services to the
7 patient.

8 (3) Each patient has the right to be informed of and
9 to participate in the planning of his or her care. Each
10 patient must be provided, upon request, a copy of the plan of
11 care established and maintained for that patient by the home
12 health agency.

13 (4) Home health services that are provided to a
14 patient must be evaluated in the patient's home by a physician
15 licensed under chapter 458, chapter 459, chapter 460, or
16 chapter 461 or by a registered nurse licensed under chapter
17 464 as frequently as necessary to assure safe and adequate
18 care, but not less frequently than once every 62 days.

19 (5) A home health agency must provide at least one
20 home health service to patients for whom it has agreed to
21 provide care. Services provided by others under contractual
22 arrangements to a home health agency's patients must be
23 monitored and controlled by the home health agency.

24 (6) The services provided by a home health agency,
25 directly or under contract, must be supervised and coordinated
26 in accordance with the plan of care.

27 (7) Home health agency personnel may withhold or
28 withdraw cardiopulmonary resuscitation if presented with an
29 order not to resuscitate executed pursuant to s. 401.45. The
30 agency shall adopt rules providing for the implementation of
31 such orders. Home health personnel and agencies shall not be

Amendment No. 01 (for drafter's use only)

1 subject to criminal prosecution or civil liability, nor be
2 considered to have engaged in negligent or unprofessional
3 conduct, for withholding or withdrawing cardiopulmonary
4 resuscitation pursuant to such an order and rules adopted by
5 the agency.

6 Section 6. Present subsection (8) of section 400.6095,
7 Florida Statutes, is renumbered as subsection (9), and a new
8 subsection (8) is added to that section, to read:

9 400.6095 Patient admission; assessment; plan of care;
10 discharge; death.--

11 (8) The hospice care team may withhold or withdraw
12 cardiopulmonary resuscitation if presented with an order not
13 to resuscitate executed pursuant to s. 401.45. The department
14 shall adopt rules providing for the implementation of such
15 orders. Hospice staff shall not be subject to criminal
16 prosecution or civil liability, nor be considered to have
17 engaged in negligent or unprofessional conduct, for
18 withholding or withdrawing cardiopulmonary resuscitation
19 pursuant to such an order and rules adopted by the department.

20 Section 7. Present subsection (3) of section 400.621,
21 Florida Statutes, 1998 Supplement, is renumbered as subsection
22 (4), and a new subsection (3) is added to that section, to
23 read:

24 400.621 Rules and standards relating to adult
25 family-care homes.--

26 (3) The department shall adopt rules providing for the
27 implementation of orders not to resuscitate. The provider may
28 withhold or withdraw cardiopulmonary resuscitation if
29 presented with an order not to resuscitate executed pursuant
30 to s. 401.45. The provider shall not be subject to criminal
31 prosecution or civil liability, nor be considered to have

Amendment No. 01 (for drafter's use only)

1 engaged in negligent or unprofessional conduct, for
2 withholding or withdrawing cardiopulmonary resuscitation
3 pursuant to such an order and rules adopted by the department.

4 Section 8. Subsection (3) of section 401.45, Florida
5 Statutes, is amended and subsection (5) is added to that
6 section, to read:

7 401.45 Denial of emergency treatment; civil
8 liability.--

9 (3)(a) ~~Resuscitation or life-prolonging techniques~~ may
10 be withheld or withdrawn from a patient by an emergency
11 medical technician or paramedic if evidence of an order not to
12 resuscitate by the patient's physician is presented to the
13 emergency medical technician or paramedic ~~in a manner provided~~
14 ~~by rule of the department.~~

15 (b) Any licensee, physician, medical director, or
16 emergency medical technician or paramedic who acts under the
17 direction of a medical director is not subject to criminal
18 prosecution or civil liability, and has not engaged in
19 negligent or unprofessional conduct, as a result of the
20 withholding or withdrawal of resuscitation ~~or life-prolonging~~
21 ~~techniques~~ from a patient pursuant to this subsection and
22 rules adopted by the department.

23 (c) The department, in consultation with the
24 Department of Elderly Affairs and the Agency for Health Care
25 Administration, shall develop a standardized
26 do-not-resuscitate identification system with devices that
27 signify, when carried or worn, that the possessor is a patient
28 for whom a physician has issued an order not to administer
29 cardiopulmonary resuscitation. The department may charge a
30 reasonable fee to cover the cost of producing and distributing
31 such identification devices. Use of such devices shall be

Amendment No. 01 (for drafter's use only)

1 voluntary.

2 (5) The department shall adopt and enforce all rules
3 necessary to implement this section.

4 Section 9. Subsection (9) is added to section 455.604,
5 Florida Statutes, 1998 Supplement, to read:

6 455.604 Requirement for instruction for certain
7 licensees on human immunodeficiency virus and acquired immune
8 deficiency syndrome.--

9 (9) In lieu of completing a course as required in
10 subsection (1), the licensee may complete a course in
11 end-of-life care and palliative health care, so long as the
12 licensee completed an approved AIDS/HIV course in the
13 immediately preceding biennium.

14 Section 10. Subsection (4) is added to section
15 458.319, Florida Statutes, 1998 Supplement, to read:

16 458.319 Renewal of license.--

17 (4) Notwithstanding the provisions of s. 455.604, a
18 physician may complete continuing education on end-of-life
19 care and palliative health care in lieu of continuing
20 education in AIDS/HIV, if that physician has completed the
21 AIDS/HIV continuing education in the immediately preceding
22 biennium.

23 Section 11. Subsection (5) is added to section
24 459.008, Florida Statutes, 1998 Supplement, to read:

25 459.008 Renewal of licenses and certificates.--

26 (5) Notwithstanding the provisions of s. 455.604, an
27 osteopathic physician may complete continuing education on
28 end-of-life and palliative health care in lieu of continuing
29 education in AIDS/HIV, if that physician has completed the
30 AIDS/HIV continuing education in the immediately preceding
31 biennium.

Amendment No. 01 (for drafter's use only)

1 Section 12. Section 732.912, Florida Statutes, 1998
2 Supplement, is amended to read:

3 732.912 Persons who may make an anatomical gift.--

4 (1) Any person who may make a will may give all or
5 part of his or her body for any purpose specified in s.
6 732.910, the gift to take effect upon death. An anatomical
7 gift made by an adult donor and not revoked by the donor as
8 provided in s. 732.916 is irrevocable and does not require the
9 consent or concurrence of any person after the donor's death.

10 (2) If the decedent has ~~not~~ executed an agreement
11 concerning an anatomical gift, including signing an organ and
12 tissue donor card, expressing his or her wish to donate in a
13 living will or advance directive, or signifying his or her
14 intent to donate on his or her driver's license or in some
15 other written form has indicated his or her wish to make an
16 anatomical gift,~~a member of one of the classes of persons~~
17 ~~listed below, in the order of priority stated and in the~~
18 absence of actual notice of contrary indications by the
19 decedent ~~or actual notice of opposition by a member of the~~
20 ~~same or a prior class,~~ the surrogate designated by the
21 decedent pursuant to part II of chapter 765 may give all or
22 any part of the decedent's body for any purpose specified in
23 s. 732.910.†

24 (3) If the decedent has not executed an agreement
25 concerning an anatomical gift or designated a surrogate
26 pursuant to part II of chapter 765 to make an anatomical gift
27 pursuant to the conditions of subsection (2), a member of one
28 of the classes of persons listed below, in the order of
29 priority stated and in the absence of actual notice of
30 contrary indications by the decedent or actual notice of
31 opposition by a member of the same or a prior class, may give

Amendment No. 01 (for drafter's use only)

1 all or any part of the decedent's body for any purpose
2 specified in s. 732.910:

- 3 (a) The spouse of the decedent;
4 (b) An adult son or daughter of the decedent;
5 (c) Either parent of the decedent;
6 (d) An adult brother or sister of the decedent;
7 (e) A grandparent of the decedent;
8 (f) A guardian of the person of the decedent at the
9 time of his or her death; or
10 (g) A representative ad litem who shall be appointed
11 by a court of competent jurisdiction forthwith upon a petition
12 heard ex parte filed by any person, which representative ad
13 litem shall ascertain that no person of higher priority exists
14 who objects to the gift of all or any part of the decedent's
15 body and that no evidence exists of the decedent's having made
16 a communication expressing a desire that his or her body or
17 body parts not be donated upon death;

18
19 but no gift shall be made by the spouse if any adult son or
20 daughter objects, and provided that those of higher priority,
21 if they are reasonably available, have been contacted and made
22 aware of the proposed gift, and further provided that a
23 reasonable search is made to show that there would have been
24 no objection on religious grounds by the decedent.

25 ~~(4)(3)~~ If the donee has actual notice of contrary
26 indications by the decedent or, in the case of a spouse making
27 the gift, an objection of an adult son or daughter or actual
28 notice that a gift by a member of a class is opposed by a
29 member of the same or a prior class, the donee shall not
30 accept the gift.

31 ~~(5)(4)~~ The person authorized by subsection ~~(3)(2)~~ may

Amendment No. 01 (for drafter's use only)

1 make the gift after the decedent's death or immediately before
2 the decedent's death.

3 ~~(6)~~~~(5)~~ A gift of all or part of a body authorizes any
4 examination necessary to assure medical acceptability of the
5 gift for the purposes intended.

6 ~~(7)~~~~(6)~~ Once the gift has been made, the rights of the
7 donee are paramount to the rights of others, except as
8 provided by s. 732.917.

9 Section 13. Subsection (5) of section 732.914, Florida
10 Statutes, 1998 Supplement, is amended to read:

11 732.914 Manner of executing anatomical gifts.--

12 (5) Any gift by a member of a class designated in s.
13 732.912~~(3)~~~~(2)~~ must be made by a document signed by that person
14 or made by that person's witnessed telephonic discussion,
15 telegraphic message, or other recorded message.

16 Section 14. Subsection (3) of section 732.917, Florida
17 Statutes, is amended to read:

18 732.917 Rights and duties at death.--

19 (3) The organ procurement organization, tissue bank,
20 or eye bank, or hospital medical professionals under the
21 direction thereof, may perform any and all tests to evaluate
22 the deceased as a potential donor and any invasive procedures
23 on the deceased body in order to preserve the potential
24 donor's organs. These procedures do not include the surgical
25 removal of an organ or penetrating any body cavity,
26 specifically for the purpose of donation, until a properly
27 executed donor card or document is located or, if a properly
28 executed donor card or document cannot be located, a person
29 specified in s. 732.912~~(3)~~~~(2)~~ has been located, has been
30 notified of the death, and has granted legal permission for
31 the donation.

Amendment No. 01 (for drafter's use only)

1 Section 15. Subsection (2) of section 732.922, Florida
2 Statutes, 1998 Supplement, is amended to read:

3 732.922 Duty of certain hospital administrators;
4 liability of hospital administrators, organ procurement
5 organizations, eye banks, and tissue banks.--

6 (2) Where, based on accepted medical standards, a
7 hospital patient is a suitable candidate for organ or tissue
8 donation, the hospital administrator or the hospital
9 administrator's designee shall, at or near the time of death,
10 access the organ and tissue donor registry created by s.
11 732.915(4) to ascertain the existence of a donor card or
12 document executed by the decedent. In the absence of a donor
13 card, organ donation sticker or organ donation imprint on a
14 driver's license, or other properly executed document, the
15 hospital administrator or designee shall request:

16 (a) The patient's health care surrogate, as permitted
17 in s. 732.912(2); or

18 (b) If the patient does not have a surrogate, or the
19 surrogate is not reasonably available, any of the persons
20 specified in s. 732.912(3), in the order and manner of
21 priority stated in s. 732.912(3),

22
23 to consent to the gift of all or any part of the decedent's
24 body for any purpose specified in this part. Except as
25 provided in s. 732.912, in the absence of actual notice of
26 opposition, consent need only be obtained from the person or
27 persons in the highest priority class reasonably available.

28 Section 16. Section 765.101, Florida Statutes, is
29 amended to read:

30 765.101 Definitions.--As used in this chapter:

31 (1) "Advance directive" means a witnessed written

Amendment No. 01 (for drafter's use only)

1 document or oral statement in which instructions are given by
2 a principal or in which the principal's desires are expressed
3 concerning any aspect of the principal's health care, and
4 includes, but is not limited to, the designation of a health
5 care surrogate, a living will, or an anatomical gift made
6 pursuant to part X of chapter 732 ~~orders not to resuscitate~~
7 ~~issued pursuant to s. 401.45.~~

8 (2) "Attending physician" means the primary physician
9 who has responsibility for the treatment and care of the
10 patient.

11 (3) "Close personal friend" means any person 18 years
12 of age or older who has exhibited special care and concern for
13 the patient, and who presents an affidavit to the health care
14 facility or to the attending or treating physician stating
15 that he or she is a friend of the patient; is willing and able
16 to become involved in the patient's health care; and has
17 maintained such regular contact with the patient so as to be
18 familiar with the patient's activities, health, and religious
19 or moral beliefs.

20 (4) "End-stage condition" means a condition that is
21 caused by injury, disease, or illness which has resulted in
22 severe and permanent deterioration, indicated by incapacity
23 and complete physical dependency, and for which, to a
24 reasonable degree of medical certainty, treatment of the
25 irreversible condition would be medically ineffective.

26 (5)~~(4)~~ "Health care decision" means:

27 (a) Informed consent, refusal of consent, or
28 withdrawal of consent to any and all health care, including
29 life-prolonging procedures.

30 (b) The decision to apply for private, public,
31 government, or veterans' benefits to defray the cost of health

Amendment No. 01 (for drafter's use only)

1 care.

2 (c) The right of access to all records of the
3 principal reasonably necessary for a health care surrogate to
4 make decisions involving health care and to apply for
5 benefits.

6 (d) The decision to make an anatomical gift pursuant
7 to part X of chapter 732.

8 (6)(5) "Health care facility" means a hospital,
9 nursing home, hospice, home health agency, or health
10 maintenance organization licensed in this state, or any
11 facility subject to part I of chapter 394.

12 (7)(6) "Health care provider" or "provider" means any
13 person licensed, certified, or otherwise authorized by law to
14 administer health care in the ordinary course of business or
15 practice of a profession.

16 (8)(7) "Incapacity" or "incompetent" means the patient
17 is physically or mentally unable to communicate a willful and
18 knowing health care decision. For the purposes of making an
19 anatomical gift, the term also includes a patient who is
20 deceased.

21 (9)(8) "Informed consent" means consent voluntarily
22 given by a person after a sufficient explanation and
23 disclosure of the subject matter involved to enable that
24 person to have a general understanding of the treatment or
25 procedure and the medically acceptable alternatives, including
26 the substantial risks and hazards inherent in the proposed
27 treatment or alternative procedures, and to make a knowing
28 health care decision without coercion or undue influence.

29 (10)(9) "Life-prolonging procedure" means any medical
30 procedure, treatment, or intervention, including artificially
31 provided sustenance and hydration, which sustains, restores,

Amendment No. 01 (for drafter's use only)

1 or supplants a spontaneous vital function, which:

2 ~~(a) Utilizes mechanical or other artificial means to~~
3 ~~sustain, restore, or supplant a spontaneous vital function;~~
4 ~~and~~

5 ~~(b) When applied to a patient in a terminal condition,~~
6 ~~serves only to prolong the process of dying.~~

7
8 The term "~~life-prolonging procedure~~" does not include the
9 administration of medication or performance of medical
10 procedure, when such medication or procedure is deemed
11 necessary to provide comfort care or to alleviate pain.

12 (11)~~(10)~~ "Living will" or "declaration" means:

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

15 (b) A witnessed oral statement made by the principal
16 expressing the principal's instructions concerning
17 life-prolonging procedures.

18 (12) "Persistent vegetative state" means a permanent
19 and irreversible condition of unconsciousness in which there
20 is:

21 (a) The absence of voluntary action or cognitive
22 behavior of any kind.

23 (b) An inability to communicate or interact
24 purposefully with the environment.

25 (13)~~(11)~~ "Physician" means a person licensed pursuant
26 to chapter 458 or chapter 459.

27 (14)~~(12)~~ "Principal" means a competent adult executing
28 an advance directive and on whose behalf health care decisions
29 are to be made.

30 (15)~~(13)~~ "Proxy" means a competent adult who has not
31 been expressly designated to make health care decisions for a

Amendment No. 01 (for drafter's use only)

1 particular incapacitated individual, but who, nevertheless, is
2 authorized pursuant to s. 765.401 to make health care
3 decisions for such individual.

4 ~~(16)~~(14) "Surrogate" means any competent adult
5 expressly designated by a principal to make health care
6 decisions on behalf of the principal upon the principal's
7 incapacity.

8 ~~(17)~~(15) "Terminal condition" means+
9 ~~(a)~~ a condition caused by injury, disease, or illness
10 from which there is no reasonable medical probability of
11 recovery and which, without treatment, can be expected to
12 cause death. ~~or~~

13 ~~(b)~~ A persistent vegetative state characterized by a
14 permanent and irreversible condition of unconsciousness in
15 which there is+

16 1. ~~The absence of voluntary action or cognitive~~
17 ~~behavior of any kind; and~~

18 2. ~~An inability to communicate or interact~~
19 ~~purposefully with the environment.~~

20 ~~(16)~~ "Treating physician" means the physician who has
21 treated or is treating the patient for any condition directly
22 related to the condition resulting in the patient's
23 incapacity.

24 Section 17. Subsection (3) of section 765.102, Florida
25 Statutes, is amended to read:

26 765.102 Legislative findings and intent.--

27 (3) The Legislature recognizes ~~further finds~~ that for
28 some the administration of life-prolonging medical procedures
29 may result in the artificial prolongation of life for a person
30 with a terminal condition may secure for him or her only a
31 precarious and burdensome existence, ~~while providing nothing~~

Amendment No. 01 (for drafter's use only)

1 ~~medically necessary or beneficial to the patient.~~ In order to
2 ensure that the rights and intentions of a person ~~with such a~~
3 ~~condition~~ may be respected even after he or she is no longer
4 able to participate actively in decisions concerning himself
5 or herself, and to encourage communication among such patient,
6 his or her family, and his or her physician, the Legislature
7 declares that the laws of this state recognize the right of a
8 competent adult to make an advance directive instructing his
9 or her physician to provide, withhold, or withdraw
10 life-prolonging procedures, or to designate another to make
11 the treatment decision for him or her in the event that such
12 person should become incapacitated and unable to personally
13 direct his or her medical care ~~be found to be incompetent and~~
14 ~~suffering from a terminal condition.~~

15 Section 18. Section 765.103, Florida Statutes, is
16 amended to read:

17 765.103 Existing advance directives.--Any advance
18 directive made prior to October 1, 1999,~~April 10, 1992,~~ shall
19 be given effect as executed,~~as provided in this chapter~~
20 provided such directive was legally effective when written.

21 Section 19. Section 765.104, Florida Statutes, is
22 amended to read:

23 765.104 Amendment or revocation.--

24 (1) An advance directive or designation of a surrogate
25 may be amended or revoked at any time by a competent
26 principal:

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

28 (b) By means of the physical cancellation or
29 destruction of the advance directive by the principal or by
30 another in the principal's presence and at the principal's
31 direction;

Amendment No. 01 (for drafter's use only)

1 (c) By means of an oral expression of intent to amend
2 or revoke; or

3 (d) By means of a subsequently executed advance
4 directive that is materially different from a previously
5 executed advance directive.

6 (2) Unless otherwise provided in the advance directive
7 or in an order of dissolution or annulment of marriage, the
8 dissolution or annulment of marriage of the principal revokes
9 the designation of the principal's former spouse as a
10 surrogate.

11 (3) Any such amendment or revocation will be effective
12 when it is communicated to the surrogate, health care
13 provider, or health care facility. No civil or criminal
14 liability shall be imposed upon any person for a failure to
15 act upon an amendment or a revocation unless that person has
16 actual knowledge of such amendment or revocation.

17 Section 20. Section 765.107, Florida Statutes, is
18 amended to read:

19 765.107 Construction.--

20 (1) This chapter shall not be construed to repeal by
21 implication any provision of s. 766.103, the Florida Medical
22 Consent Law. For all purposes, the Florida Medical Consent
23 Law shall be considered an alternative to provisions of this
24 section.

25 (2) Procedures provided in this chapter permitting the
26 withholding or withdrawal of life-prolonging procedures do not
27 apply to a person who never had capacity to designate a health
28 care surrogate or execute a living will.

29 Section 21. Section 765.110, Florida Statutes, is
30 amended to read:

31 765.110 Health care facilities and providers;

Amendment No. 01 (for drafter's use only)

1 discipline.--

2 (1) A health care facility, pursuant to Pub. L. No.
3 101-508, ss. 4206 and 4751, shall provide to each patient
4 written information concerning the individual's rights
5 concerning advance directives and the health care facility's
6 policies respecting the implementation of such rights, and
7 shall document in the patient's medical records whether or not
8 the individual has executed an advance directive.

9 (2) A health care provider or health care facility may
10 not require a patient to execute an advance directive or to
11 execute a new advance directive using the facility's or
12 provider's forms. The patient's advance directives shall
13 travel with the patient as part of the patient's medical
14 record.

15 (3)(2) A health care provider or health care facility
16 shall be subject to professional discipline and revocation of
17 license or certification, and a fine of not more than \$1,000
18 ~~\$500~~ per incident, or both, if the health care provider or
19 health care facility, as a condition of treatment or
20 admission, requires an individual to execute or waive an
21 advance directive.

22 (4)(3) The Department of Elderly Affairs for hospices
23 and, in consultation with the Department of Elderly Affairs,
24 the Department of Health for health care providers, and
25 ~~Rehabilitative Services~~ and the Agency for Health Care
26 Administration for hospitals, nursing homes, home health
27 agencies, and health maintenance organizations, and the
28 Department of Children and Family Services for facilities
29 subject to part I of chapter 394 shall adopt rules to
30 implement the provisions of the section.

31 Section 22. Subsection (2) of section 765.204, Florida

Amendment No. 01 (for drafter's use only)

1 Statutes, is amended to read:

2 765.204 Capacity of principal; procedure.--

3 (2) If a principal's capacity to make health care
4 decisions for herself or himself or provide informed consent
5 is in question, the attending physician shall evaluate the
6 principal's capacity. If the attending physician concludes
7 that the principal lacks ~~such~~ capacity, another physician
8 shall also evaluate the principal's capacity. If the second
9 physician agrees that the principal lacks the capacity to make
10 health care decisions or provide informed consent, the health
11 care facility shall enter both physician's evaluations in the
12 principal's clinical record and, if the principal has
13 designated a health care surrogate, shall notify such
14 surrogate in writing that her or his authority under the
15 instrument has commenced.

16 Section 23. Subsection (2) of section 765.205, Florida
17 Statutes, is amended to read:

18 765.205 Responsibility of the surrogate.--

19 (2) The surrogate may authorize the release of
20 information and clinical records to appropriate persons to
21 ensure the continuity of the principal's health care and may
22 authorize the ~~transfer and~~ admission, discharge, or transfer
23 of the principal to or from a health care facility or other
24 facility or program licensed under chapter 400.

25 Section 24. Section 765.301, Florida Statutes, is
26 amended to read:

27 765.301 Short title.--Sections 765.302-765.309
28 ~~765.302-765.310~~ may be cited as the "Life-Prolonging Procedure
29 Act of Florida."

30 Section 25. Subsection (1) of section 765.302, Florida
31 Statutes, is amended to read:

Amendment No. 01 (for drafter's use only)

1 765.302 Procedure for making a living will; notice to
2 physician.--

3 (1) Any competent adult may, at any time, make a
4 living will or written declaration and direct ~~directing~~ the
5 providing, withholding, or withdrawal of life-prolonging
6 procedures in the event that such person has a terminal
7 condition, has an end-stage condition, or is in a persistent
8 vegetative state ~~suffers from a terminal condition~~. A living
9 will must be signed by the principal in the presence of two
10 subscribing witnesses, one of whom is neither a spouse nor a
11 blood relative of the principal. If the principal is
12 physically unable to sign the living will, one of the
13 witnesses must subscribe the principal's signature in the
14 principal's presence and at the principal's direction.

15 Section 26. Subsection (1) of section 765.303, Florida
16 Statutes, is amended to read:

17 765.303 Suggested form of a living will.--

18 (1) A living will may, BUT NEED NOT, be in the
19 following form:

20 Living Will

21 Declaration made this day of, 19 I,
22 , willfully and voluntarily make known my desire that
23 my dying not be artificially prolonged under the circumstances
24 set forth below, and I do hereby declare that, +if at any time
25 I am both mentally and physically incapacitated

26 initial to require as a condition of your living will:
27 and I have a terminal condition
28 and I have an end stage condition
29 and I am in a persistent vegetative state
30

31 and if my attending or treating physician has ~~and another~~

Amendment No. 01 (for drafter's use only)

1 Witness....
 2 Address....
 3 Phone....
 4 Witness....
 5 Address....
 6 Phone....

7
8 Section 27. Subsection (2) of section 765.304, Florida
9 Statutes, is amended to read:

10 765.304 Procedure for living will.--

11 (2) Before proceeding in accordance with the
12 principal's living will, it must be determined that:

13 (a) The principal does not have a reasonable medical
14 probability of recovering capacity ~~competency~~ so that the
15 right could be exercised directly by the principal.

16 (b) The principal has a terminal condition, has an
17 end-stage condition, or is in a persistent vegetative state.
18 ~~The principal's physical condition is terminal.~~

19 (c) Any limitations or conditions expressed orally or
20 in a written declaration have been carefully considered and
21 satisfied.

22 Section 28. Section 765.305, Florida Statutes, is
23 amended to read:

24 765.305 Procedure in absence of a living will.--

25 (1) In the absence of a living will ~~executed pursuant~~
26 ~~to s. 765.303~~, the decision to withhold or withdraw
27 life-prolonging procedures from a patient may be made by a
28 health care surrogate designated by the patient pursuant to
29 part II unless the designation limits the surrogate's
30 authority to consent to the withholding or withdrawal of
31 life-prolonging procedures.

Amendment No. 01 (for drafter's use only)

1 (2) Before exercising the incompetent patient's right
2 to forego treatment, the surrogate must be satisfied that:

3 (a) The patient does not have a reasonable medical
4 probability of recovering capacity ~~competency~~ so that the
5 right could be exercised by the patient.

6 (b) The patient is both mentally and physically
7 incapacitated with no reasonable medical probability of
8 recovery, the patient has an end-stage condition, the patient
9 is in a persistent vegetative state, or the patient's physical
10 condition is terminal.

11 Section 29. Section 765.306, Florida Statutes, is
12 amended to read:

13 765.306 Determination of patient condition.--In
14 determining whether the patient has a terminal condition, has
15 an end-stage condition, or is in a persistent vegetative state
16 or may recover mental and physical capacity, or whether a
17 medical condition or limitation referred to in an advance
18 directive exists, the patient's attending or treating
19 physician ~~and at least one other consulting physician~~ must
20 ~~separately~~ examine the patient. The findings of each such
21 examination must be documented in the patient's medical record
22 and signed by each examining physician before life-prolonging
23 procedures may be withheld or withdrawn.

24 Section 30. Section 765.308, Florida Statutes, is
25 renumbered as section 765.1105, Florida Statutes, and amended
26 to read:

27 765.1105 ~~765.308~~ Transfer of a patient.--

28 (1) A health care provider or facility that refuses to
29 comply with a patient's advance directive ~~the declaration of a~~
30 ~~patient~~, or the treatment decision of his or her surrogate,
31 shall make reasonable efforts to transfer the patient to

Amendment No. 01 (for drafter's use only)

1 another health care provider or facility that will comply with
2 the directive ~~declaration~~ or treatment decision. This chapter
3 does not require a health care provider or facility to commit
4 any act which is contrary to the provider's or facility's
5 moral or ethical beliefs ~~concerning life-prolonging~~
6 ~~procedures~~, if the patient:

7 (a) Is not in an emergency condition; ~~and~~
8 (b) Has received written information upon admission
9 informing the patient of the policies of the health care
10 provider or facility regarding such moral or ethical beliefs.

11 (2) A health care provider or facility that is
12 unwilling to carry out the wishes of the patient or the
13 treatment decision of his or her surrogate because of moral or
14 ethical beliefs must within 7 days either:

15 (a) Transfer the patient to another health care
16 provider or facility. The health care provider or facility
17 shall pay the costs for transporting the patient to another
18 health care provider or facility; or

19 (b) If the patient has not been transferred, carry out
20 the wishes of the patient or the patient's surrogate, unless
21 the provisions of s. 765.105 apply.

22 Section 31. Section 765.310, Florida Statutes, is
23 renumbered as section 765.1115, Florida Statutes, and amended
24 to read:

25 765.1115 ~~765.310~~ Falsification, forgery, or willful
26 concealment, cancellation, or destruction of directive
27 ~~declaration~~ or revocation or amendment; penalties.--

28 (1) Any person who willfully conceals, cancels,
29 defaces, obliterates, or damages an advance directive ~~a living~~
30 ~~will~~ without the principal's consent or who falsifies or
31 forges the revocation or amendment of an advance directive ~~a~~

Amendment No. 01 (for drafter's use only)

1 ~~revocation of a living will~~ of another, and who thereby causes
2 life-prolonging procedures to be utilized in contravention of
3 the previously expressed intent of the principal, commits a
4 felony of the third degree, punishable as provided in s.
5 775.082, s. 775.083, or s. 775.084.

6 (2) Any person who falsifies or forges the advance
7 directive ~~living will~~ of another or who willfully conceals or
8 withholds personal knowledge of the revocation of an advance
9 directive ~~a declaration~~, with the intent to cause a
10 withholding or withdrawal of life-prolonging procedures
11 contrary to the wishes of the principal, and who thereby
12 because of such act directly causes life-prolonging procedures
13 to be withheld or withdrawn and death to be hastened, commits
14 a felony of the second degree, punishable as provided in s.
15 775.082, s. 775.083, or s. 775.084.

16 Section 32. Subsection (3) of section 765.401, Florida
17 Statutes, is amended to read:

18 765.401 The proxy.--

19 (3) Before exercising the incapacitated patient's
20 rights to select or decline health care, the proxy must comply
21 with the pertinent provisions applicable to surrogates under
22 this chapter, except that a proxy's decision to withhold or
23 withdraw life-prolonging procedures must either:

24 (a) Be supported by a written declaration; or

25 (b) If there is no written declaration, the patient
26 must have a terminal condition, have an end-stage condition,
27 or be in a persistent vegetative state, and the proxy's
28 decision must be supported by clear and convincing evidence
29 that the decision would have been the one the patient would
30 have chosen had the patient been competent.

31 Section 33. Section 765.404, Florida Statutes, is

Amendment No. 01 (for drafter's use only)

1 created to read:

2 765.404 Persistent vegetative state.--For persons in a
3 persistent vegetative state, as determined by the attending
4 physician in accordance with currently accepted medical
5 standards, who have no advance directive and for whom there is
6 no evidence indicating what the person would have wanted under
7 such conditions, and for whom, after a reasonably diligent
8 inquiry, no family or friends are available or willing to
9 serve as a proxy to make health care decisions for them,
10 life-prolonging procedures may be withheld or withdrawn under
11 the following conditions:

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

15 (2) The guardian and the person's attending physician,
16 in consultation with the medical ethics committee of the
17 facility where the patient is located, conclude that the
18 condition is permanent and that there is no reasonable medical
19 probability for recovery and that withholding or withdrawing
20 life prolonging procedures is in the best interest of the
21 patient. If there is no medical ethics committee at the
22 facility, the facility must have an arrangement with the
23 medical ethics committee of another facility or with a
24 community-based ethics committee approved by the Florida
25 Bio-ethics Network. The ethics committee shall review the case
26 with the guardian, in consultation with the person's attending
27 physician, to determine whether the condition is permanent and
28 there is no reasonable medical probability for recovery. The
29 individual committee members and the facility associated with
30 an ethics committee shall not be held liable in any civil
31 action related to the performance of any duties required in

Amendment No. 01 (for drafter's use only)

1 this subsection.

2 Section 34. The Department of Elderly Affairs shall
3 convene a workgroup composed of health care professionals,
4 health facilities, attorneys, consumers, clergy, academic
5 institutions, and other interested parties to develop model
6 advance directive forms. The department shall make the forms
7 available to the public. The department may reconvene the
8 workgroup as necessary to modify and update such forms.

9 Section 35. Except as otherwise expressly provided in
10 this act, this act shall take effect October 1, 1999.

11
12

13 ===== T I T L E A M E N D M E N T =====

14 And the title is amended as follows:

15 remove from the title of the bill:

16

17 and insert in lieu thereof:

18 An act relating to end-of-life care; providing
19 legislative findings; authorizing the Secretary
20 of Health to develop and implement
21 demonstration projects; requiring reports;
22 requesting the Chancellor of the State
23 University System to convene a working group;
24 amending ss. 395.1041, 400.142, 400.4255,
25 400.487, 400.6095, 400.621, F.S.; authorizing
26 personnel of hospital emergency services,
27 long-term care facilities, assisted living
28 facilities, home health agencies, hospices, and
29 adult family-care homes to withhold or withdraw
30 cardiopulmonary resuscitation pursuant to an
31 order not to resuscitate; providing for rules;

Amendment No. 01 (for drafter's use only)

1 providing certain protection from prosecution
2 and liability; amending s. 401.45, F.S.;
3 revising authority of emergency medical
4 technicians and paramedics to withhold or
5 withdraw resuscitation or life-prolonging
6 techniques; directing the Department of Health
7 to develop a standardized do-not-resuscitate
8 identification system; authorizing a fee;
9 providing for rules; amending ss. 455.604,
10 458.319, 459.008, F.S.; providing that courses
11 on end-of-life care will fulfill certain
12 education requirements; amending s. 732.912,
13 F.S.; revising provisions relating to who may
14 make anatomical gifts; amending ss. 732.914,
15 732.917, F.S.; correcting cross-references;
16 amending s. 732.922, F.S.; conforming
17 provisions relating to duty of certain hospital
18 administrators; amending s. 765.101, F.S.;
19 revising definitions; defining the terms
20 "persistent vegetative state" and "end-stage
21 condition"; amending s. 765.102, F.S.; revising
22 legislative intent relating to advance
23 directives; amending s. 765.103, F.S.;
24 providing for effect of existing advance
25 directives; amending s. 765.104, F.S.;
26 providing for amendment of an advance directive
27 or designation of a surrogate; amending s.
28 765.107, F.S.; providing nonapplicability to
29 certain persons; amending s. 765.110, F.S.;
30 prohibiting certain actions by a health care
31 facility or provider with respect to a

Amendment No. 01 (for drafter's use only)

1 patient's advance directive; increasing a
2 penalty; requiring that advance directives
3 become part of patients' medical records;
4 providing for rules; amending s. 765.204, F.S.;
5 revising provisions relating to evaluation of a
6 patient's capacity to make health care
7 decisions; amending s. 765.205, F.S.; revising
8 responsibilities of the surrogate; amending s.
9 765.301, F.S.; correcting a cross-reference;
10 amending s. 765.302, F.S.; revising procedure
11 for making a living will; amending s. 765.303,
12 F.S.; revising suggested form of a living will;
13 amending s. 765.304, F.S.; revising procedure
14 for implementing a living will; amending s.
15 765.305, F.S.; revising procedure in the
16 absence of a living will; amending s. 765.306,
17 F.S.; revising provisions relating to
18 determination of the patient's condition;
19 renumbering and amending s. 765.308, F.S.;
20 providing for transfer of a patient under
21 certain circumstances; renumbering and amending
22 s. 765.310, F.S.; providing penalties for
23 falsification, forgery, or willful concealment,
24 cancellation, or destruction of an advance
25 directive, or a revocation or amendment
26 thereof; amending s. 765.401, F.S.; revising
27 provisions relating to decisions by a proxy;
28 creating s. 765.404, F.S.; providing conditions
29 for withholding or withdrawing life-prolonging
30 procedures for certain persons in a persistent
31 vegetative state; directing the Department of

Amendment No. 01 (for drafter's use only)

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Elderly Affairs to convene a workgroup to
develop model advance directive forms;
providing effective dates.