

By the Committee on Elder Affairs & Long-Term Care and Representatives Argenziano, Heyman, Sobel, Reddick, Fiorentino, Bilirakis, Littlefield, Kosmas, Bitner, Jacobs and Levine

1                                   A bill to be entitled  
2           An act relating to end-of-life care; providing  
3           legislative findings; authorizing the Secretary  
4           of Health to develop and implement  
5           demonstration projects; requiring reports;  
6           requesting the Chancellor of the State  
7           University System to convene a working group;  
8           amending ss. 395.1041, 400.142, 400.4255,  
9           400.487, 400.6095, and 400.621, F.S.;  
10          authorizing personnel of hospital emergency  
11          services, long-term care facilities, assisted  
12          living facilities, home health agencies,  
13          hospices, and adult family-care homes to  
14          withhold or withdraw cardiopulmonary  
15          resuscitation pursuant to an order not to  
16          resuscitate; providing for rules; providing  
17          certain protection from prosecution and  
18          liability; amending s. 401.45, F.S.; revising  
19          authority of emergency medical technicians and  
20          paramedics to withhold or withdraw  
21          resuscitation or life-prolonging techniques;  
22          directing the Department of Health to develop a  
23          standardized do-not-resuscitate identification  
24          system; authorizing a fee; providing for rules;  
25          amending ss. 455.604, 458.319, and 459.008,  
26          F.S.; providing that courses on end-of-life  
27          care will fulfill certain education  
28          requirements; amending s. 732.912, F.S.;  
29          revising provisions relating to who may make  
30          anatomical gifts; amending ss. 732.914 and  
31          732.917, F.S.; correcting cross references;

1           amending s. 732.922, F.S.; conforming  
2           provisions relating to duty of certain hospital  
3           administrators; amending s. 765.101, F.S.;  
4           revising definitions; amending s. 765.102,  
5           F.S.; revising legislative intent relating to  
6           advance directives; amending s. 765.103, F.S.;  
7           providing for effect of existing advance  
8           directives; amending s. 765.104, F.S.;  
9           providing for amendment of an advance directive  
10          or designation of a surrogate; amending s.  
11          765.107, F.S.; providing nonapplicability to  
12          certain persons; amending s. 765.110, F.S.;  
13          prohibiting certain actions by a health care  
14          facility or provider with respect to a  
15          patient's advance directive; increasing a  
16          penalty; requiring that advance directives  
17          become part of patients' medical records;  
18          providing for rules; amending s. 765.204, F.S.;  
19          revising provisions relating to evaluation of a  
20          patient's capacity to make health care  
21          decisions; amending s. 765.205, F.S.; revising  
22          responsibilities of the surrogate; amending s.  
23          765.301, F.S.; correcting a cross reference;  
24          amending s. 765.302, F.S.; revising procedure  
25          for making a living will; amending s. 765.303,  
26          F.S.; revising suggested form of a living will;  
27          amending s. 765.304, F.S.; revising procedure  
28          for implementing a living will; amending s.  
29          765.305, F.S.; revising procedure in the  
30          absence of a living will; amending s. 765.306,  
31          F.S.; revising provisions relating to

1 determination of the patient's condition;  
2 renumbering and amending s. 765.308, F.S.;  
3 providing for transfer of a patient under  
4 certain circumstances; renumbering and amending  
5 s. 765.310, F.S.; providing penalties for  
6 falsification, forgery, or willful concealment,  
7 cancellation, or destruction of an advance  
8 directive, or a revocation or amendment  
9 thereof; amending s. 765.401, F.S.; revising  
10 provisions relating to decisions by a proxy;  
11 creating s. 765.404, F.S.; providing conditions  
12 for withholding or withdrawing life-prolonging  
13 procedures for certain persons in a persistent  
14 vegetative state; directing the Department of  
15 Elderly Affairs to convene a workgroup to  
16 develop model advance directive forms;  
17 repealing s. 3(6) of ch. 98-327, Laws of  
18 Florida, relating to repeal of the Panel for  
19 the Study of End-of-Life Care; continuing the  
20 panel until a specified date; providing an  
21 appropriation; providing effective dates.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. End-of-life care.--

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

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

7 (c) The Legislature finds that all persons should have  
8 access to effective pain management and palliative care; that  
9 adequate management of pain and other distressing symptoms at  
10 the end-of-life should be available; and that all settings  
11 that care for seriously ill patients should address the  
12 emotional and spiritual needs of such patients. The  
13 Legislature finds that education of physicians and other  
14 health care providers is necessary to assure that patients in  
15 pain are assessed regularly and that their pain is treated  
16 aggressively without fear of undue regulatory or legal action.

17 (d) The Legislature finds that an individual's  
18 experience of death and dying, and preferences about  
19 end-of-life care, are rooted in ethnic and cultural values and  
20 beliefs. The Legislature finds that social, health, and  
21 education practitioners must be trained to understand work  
22 within different cultural parameters.

23 (e) The Legislature finds that to provide better pain  
24 management, health care providers are to be encouraged to add  
25 the assessment of pain as a "fifth vital sign." Further, the  
26 Legislature intends that in accordance with standard and  
27 accepted medical and ethical principles, the use of  
28 pharmacological substances with the intent of alleviating or  
29 eliminating pain and other discomfort is encouraged. Such use  
30 should not be regarded as legally blameworthy, even if

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1 appropriate pain control occurs during, and so precedes the  
2 outcome of, the dying process.

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

8 (2) The Secretary of Health is authorized to develop  
9 and implement up to two demonstration projects to evaluate  
10 strategies recommended by the Panel for the Study of  
11 End-of-Life Care. The Department of Health is authorized to  
12 accept for that purpose any special grant of money, services,  
13 property, gifts, or donations from any organization, medical  
14 school, or Federal Government agency, and to apply for grants  
15 to support the demonstration projects. The secretary shall  
16 report to the President of the Senate, the Speaker of the  
17 House of Representatives, and the majority and minority  
18 leaders and relevant substantive committees of both chambers,  
19 on the demonstration projects, no later than January 30 of  
20 each year.

21 (3) The Chancellor of the State University System is  
22 requested to convene a working group composed of one  
23 representative from each of the Boards of Medicine,  
24 Osteopathic Medicine, Nursing, Pharmacy, Nursing Home  
25 Administrators, and Social Work, and the chairs of the four  
26 medical schools' curriculum committees, to review available  
27 curricula for end-of-life care and make recommendations  
28 through the respective boards for content and materials to be  
29 incorporated into the basic curriculum of each medical school,  
30 school of social work, and allied health discipline.

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

3 395.1041 Access to emergency services and care.--

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

6 (1) Hospital emergency services personnel may withhold  
7 or withdraw cardiopulmonary resuscitation if presented with an  
8 order not to resuscitate executed pursuant to s. 401.45.

9 Facility staff and facilities shall not be subject to criminal  
10 prosecution or civil liability, nor be considered to have  
11 engaged in negligent or unprofessional conduct, for  
12 withholding or withdrawing cardiopulmonary resuscitation  
13 pursuant to such an order.

14 Section 3. Subsection (3) is added to section 400.142,  
15 Florida Statutes, to read:

16 400.142 Emergency medication kits; orders not to  
17 resuscitate.--

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

27 Section 4. Subsection (3) is added to section  
28 400.4255, Florida Statutes, to read:

29 400.4255 Use of ~~licensed~~ personnel; emergency care.--

30 (3) Facility staff may withhold or withdraw  
31 cardiopulmonary resuscitation if presented with an order not

1 to resuscitate executed pursuant to s. 401.45. The department  
2 shall adopt rules providing for the implementation of such  
3 orders. Facility staff and facilities shall not be subject to  
4 criminal prosecution or civil liability, nor be considered to  
5 have engaged in negligent or unprofessional conduct, for  
6 withholding or withdrawing cardiopulmonary resuscitation  
7 pursuant to such an order and rules adopted by the department.

8 Section 5. Subsection (7) is added to section 400.487,  
9 Florida Statutes, to read:

10 400.487 Patient assessment; establishment and review  
11 of plan of care; provision of services; orders not to  
12 resuscitate.--

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

23 Section 6. Subsection (8) of section 400.6095, Florida  
24 Statutes, is renumbered as subsection (9), and a new  
25 subsection (8) is added to said section to read:

26 400.6095 Patient admission; assessment; plan of care;  
27 discharge; orders not to resuscitate; death.--

28 (8) The hospice care team may withhold or withdraw  
29 cardiopulmonary resuscitation if presented with an order not  
30 to resuscitate executed pursuant to s. 401.45. The department  
31 shall adopt rules providing for the implementation of such

1 orders. Hospice staff shall not be subject to criminal  
2 prosecution or civil liability, nor be considered to have  
3 engaged in negligent or unprofessional conduct, for  
4 withholding or withdrawing cardiopulmonary resuscitation  
5 pursuant to such an order and rules adopted by the department.

6 Section 7. Subsection (3) of section 400.621, Florida  
7 Statutes, 1998 Supplement, is renumbered as subsection (4),  
8 and a new subsection (3) is added to said section to read:

9 400.621 Rules and standards relating to adult  
10 family-care homes.--

11 (3) The department shall adopt rules providing for the  
12 implementation of orders not to resuscitate. The provider may  
13 withhold or withdraw cardiopulmonary resuscitation if  
14 presented with an order not to resuscitate executed pursuant  
15 to s. 401.45. The provider 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 8. Subsection (3) of section 401.45, Florida  
21 Statutes, is amended and subsection (5) is added to said  
22 section, to read:

23 401.45 Denial of emergency treatment; civil  
24 liability.--

25 (3)(a) ~~Resuscitation or life-prolonging techniques~~ may  
26 be withheld or withdrawn from a patient by an emergency  
27 medical technician or paramedic if evidence of an order not to  
28 resuscitate by the patient's physician is presented to the  
29 emergency medical technician or paramedic ~~in a manner provided~~  
30 ~~by rule of the department.~~

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1           (b) Any licensee, physician, medical director, or  
2 emergency medical technician or paramedic who acts under the  
3 direction of a medical director is not subject to criminal  
4 prosecution or civil liability, and has not engaged in  
5 negligent or unprofessional conduct, as a result of the  
6 withholding or withdrawal of resuscitation ~~or life-prolonging~~  
7 ~~techniques~~ from a patient pursuant to this subsection and  
8 rules adopted by the department.

9           (c) The department, in consultation with the  
10 Department of Elderly Affairs and the Agency for Health Care  
11 Administration, shall develop a standardized  
12 do-not-resuscitate identification system with devices that  
13 signify, when carried or worn, that the possessor is a patient  
14 for whom a physician has issued an order not to administer  
15 cardiopulmonary resuscitation. The department may charge a  
16 reasonable fee to cover the cost of producing and distributing  
17 such identification devices. Use of such devices shall be  
18 voluntary.

19           (4) Any licensee or emergency medical technician or  
20 paramedic who in good faith provides emergency medical care or  
21 treatment within the scope of their employment and pursuant to  
22 oral or written instructions of a medical director shall be  
23 deemed to be providing emergency medical care or treatment for  
24 the purposes of s. 768.13(2)(b).

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

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

29           455.604 Requirement for instruction for certain  
30 licensees on human immunodeficiency virus and acquired immune  
31 deficiency syndrome.--

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

6           Section 10. Subsection (4) is added to section  
7 458.319, Florida Statutes, 1998 Supplement, to read:

8           458.319 Renewal of license.--

9       (4) Notwithstanding the provisions of s. 455.604, a  
10 physician may complete continuing education on end-of-life  
11 care and palliative health care in lieu of continuing  
12 education in AIDS/HIV, if that physician has completed the  
13 AIDS/HIV continuing education in the immediately preceding  
14 biennium.

15           Section 11. Subsection (5) is added to section  
16 459.008, Florida Statutes, 1998 Supplement, to read:

17           459.008 Renewal of licenses and certificates.--

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

24           Section 12. Section 732.912, Florida Statutes, 1998  
25 Supplement, is amended to read:

26           732.912 Persons who may make an anatomical gift.--

27           (1) Any person who may make a will may give all or  
28 part of his or her body for any purpose specified in s.  
29 732.910, the gift to take effect upon death. An anatomical  
30 gift made by an adult donor and not revoked by the donor as  
31

1 provided in s. 732.916 is irrevocable and does not require the  
2 consent or concurrence of any person after the donor's death.

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

17 (3) If the decedent has not executed an agreement  
18 concerning an anatomical gift or designated a surrogate  
19 pursuant to part II of chapter 765 to make an anatomical gift  
20 pursuant to the conditions of subsection (2), a member of one  
21 of the classes of persons listed below, in the order of  
22 priority stated and in the absence of actual notice of  
23 contrary indications by the decedent or actual notice of  
24 opposition by a member of the same or a prior class, may give  
25 all or any part of the decedent's body for any purpose  
26 specified in s. 732.910:

- 27 (a) The spouse of the decedent;  
28 (b) An adult son or daughter of the decedent;  
29 (c) Either parent of the decedent;  
30 (d) An adult brother or sister of the decedent;  
31 (e) A grandparent of the decedent;

1           (f) A guardian of the person of the decedent at the  
2 time of his or her death; or  
3           (g) A representative ad litem who shall be appointed  
4 by a court of competent jurisdiction forthwith upon a petition  
5 heard ex parte filed by any person, which representative ad  
6 litem shall ascertain that no person of higher priority exists  
7 who objects to the gift of all or any part of the decedent's  
8 body and that no evidence exists of the decedent's having made  
9 a communication expressing a desire that his or her body or  
10 body parts not be donated upon death;  
11  
12 but no gift shall be made by the spouse if any adult son or  
13 daughter objects, and provided that those of higher priority,  
14 if they are reasonably available, have been contacted and made  
15 aware of the proposed gift, and further provided that a  
16 reasonable search is made to show that there would have been  
17 no objection on religious grounds by the decedent.  
18           (4)~~(3)~~ If the donee has actual notice of contrary  
19 indications by the decedent or, in the case of a spouse making  
20 the gift, an objection of an adult son or daughter or actual  
21 notice that a gift by a member of a class is opposed by a  
22 member of the same or a prior class, the donee shall not  
23 accept the gift.  
24           (5)~~(4)~~ The person authorized by subsection(3)~~(2)~~ may  
25 make the gift after the decedent's death or immediately before  
26 the decedent's death.  
27           (6)~~(5)~~ A gift of all or part of a body authorizes any  
28 examination necessary to assure medical acceptability of the  
29 gift for the purposes intended.  
30  
31

1           ~~(7)(6)~~ Once the gift has been made, the rights of the  
2 donee are paramount to the rights of others, except as  
3 provided by s. 732.917.

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

6           732.914 Manner of executing anatomical gifts.--

7           (5) Any gift by a member of a class designated in s.  
8 732.912~~(3)(2)~~ must be made by a document signed by that person  
9 or made by that person's witnessed telephonic discussion,  
10 telegraphic message, or other recorded message.

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

13           732.917 Rights and duties at death.--

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

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

29           732.922 Duty of certain hospital administrators;  
30 liability of hospital administrators, organ procurement  
31 organizations, eye banks, and tissue banks.--

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

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

13           (b) If the patient does not have a surrogate, or the  
14 surrogate is not reasonably available,any of the persons  
15 specified in s. 732.912, in the order and manner of priority  
16 stated in s. 732.912,

17  
18 to consent to the gift of all or any part of the decedent's  
19 body for any purpose specified in this part. Except as  
20 provided in s. 732.912, in the absence of actual notice of  
21 opposition, consent need only be obtained from the person or  
22 persons in the highest priority class reasonably available.

23           Section 16. Section 765.101, Florida Statutes, is  
24 amended to read:

25           765.101 Definitions.--As used in this chapter:

26           (1) "Advance directive" means a witnessed written  
27 document or oral statement in which instructions are given by  
28 a principal or in which the principal's desires are expressed  
29 concerning any aspect of the principal's health care, and  
30 includes, but is not limited to, the designation of a health  
31 care surrogate, a living will, or an anatomical gift made

1 pursuant to part X of chapter 732 ~~orders not to resuscitate~~  
2 ~~issued pursuant to s. 401.45.~~

3 (2) "Attending physician" means the primary physician  
4 who has responsibility for the treatment and care of the  
5 patient.

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

15 (4) "Health care decision" means:

16 (a) Informed consent, refusal of consent, or  
17 withdrawal of consent to any and all health care, including  
18 life-prolonging procedures.

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

22 (c) The right of access to all records of the  
23 principal reasonably necessary for a health care surrogate to  
24 make decisions involving health care and to apply for  
25 benefits.

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

28 (5) "Health care facility" means a hospital, nursing  
29 home, hospice, home health agency, or health maintenance  
30 organization licensed in this state, or any facility subject  
31 to part I of chapter 394.

1           (6) "Health care provider" or "provider" means any  
2 person licensed, certified, or otherwise authorized by law to  
3 administer health care in the ordinary course of business or  
4 practice of a profession.

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

10           (8) "Informed consent" means consent voluntarily given  
11 by a person after a sufficient explanation and disclosure of  
12 the subject matter involved to enable that person to have a  
13 general understanding of the treatment or procedure and the  
14 medically acceptable alternatives, including the substantial  
15 risks and hazards inherent in the proposed treatment or  
16 alternative procedures, and to make a knowing health care  
17 decision without coercion or undue influence.

18           (9) "Life-prolonging procedure" means any medical  
19 procedure, treatment, or intervention, including artificially  
20 provided sustenance and hydration, which sustains, restores,  
21 or supplants a spontaneous vital function.~~which:~~

22           ~~(a) Utilizes mechanical or other artificial means to~~  
23 ~~sustain, restore, or supplant a spontaneous vital function;~~  
24 ~~and~~

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

27  
28 The term "~~life-prolonging procedure~~" does not include the  
29 administration of medication or performance of medical  
30 procedure, when such medication or procedure is deemed  
31 necessary to provide comfort care or to alleviate pain.



1           (10) "Living will" or "declaration" means:  
2           (a) A witnessed document in writing, voluntarily  
3 executed by the principal in accordance with s. 765.302; or  
4           (b) A witnessed oral statement made by the principal  
5 expressing the principal's instructions concerning  
6 life-prolonging procedures.  
7           (11) "Persistent vegetative state" means a permanent  
8 and irreversible condition of unconsciousness in which there  
9 is:  
10           (a) The absence of voluntary action or cognitive  
11 behavior of any kind.  
12           (b) An inability to communicate or interact  
13 purposefully with the environment.  
14           (12)~~(11)~~ "Physician" means a person licensed pursuant  
15 to chapter 458 or chapter 459.  
16           (13)~~(12)~~ "Principal" means a competent adult executing  
17 an advance directive and on whose behalf health care decisions  
18 are to be made.  
19           (14)~~(13)~~ "Proxy" means a competent adult who has not  
20 been expressly designated to make health care decisions for a  
21 particular incapacitated individual, but who, nevertheless, is  
22 authorized pursuant to s. 765.401 to make health care  
23 decisions for such individual.  
24           (15)~~(14)~~ "Surrogate" means any competent adult  
25 expressly designated by a principal to make health care  
26 decisions on behalf of the principal upon the principal's  
27 incapacity.  
28           ~~(15) "Terminal condition" means:~~  
29           ~~(a) A condition caused by injury, disease, or illness~~  
30 ~~from which there is no reasonable probability of recovery and~~  
31 ~~which, without treatment, can be expected to cause death; or~~

1           ~~(b) A persistent vegetative state characterized by a~~  
2 ~~permanent and irreversible condition of unconsciousness in~~  
3 ~~which there is:~~

4           ~~1. The absence of voluntary action or cognitive~~  
5 ~~behavior of any kind; and~~

6           ~~2. An inability to communicate or interact~~  
7 ~~purposefully with the environment.~~

8           ~~(16) "Treating physician" means the physician who has~~  
9 ~~treated or is treating the patient for any condition directly~~  
10 ~~related to the condition resulting in the patient's~~  
11 ~~incapacity.~~

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

14           765.102 Legislative findings and intent.--

15           (3) The Legislature recognizes further finds that for  
16 some the administration of life-prolonging medical procedures  
17 may result in the artificial prolongation of life for a person  
18 with a terminal condition may secure for him or her only a  
19 precarious and burdensome existence, while providing nothing  
20 medically necessary or beneficial to the patient. In order to  
21 ensure that the rights and intentions of a person ~~with such a~~  
22 ~~condition~~ may be respected even after he or she is no longer  
23 able to participate actively in decisions concerning himself  
24 or herself, and to encourage communication among such patient,  
25 his or her family, and his or her physician, the Legislature  
26 declares that the laws of this state recognize the right of a  
27 competent adult to make an advance directive instructing his  
28 or her physician to provide, withhold, or withdraw  
29 life-prolonging procedures, or to designate another to make  
30 the treatment decision for him or her in the event that such  
31 person should become incapacitated and unable to personally

1 ~~direct his or her medical care be found to be incompetent and~~  
2 ~~suffering from a terminal condition.~~

3 Section 18. Section 765.103, Florida Statutes, is  
4 amended to read:

5 765.103 Existing advance directives.--Any advance  
6 directive made prior to the effective date of this act ~~April~~  
7 ~~10, 1992,~~ shall be given effect as executed, ~~as provided in~~  
8 ~~this chapter~~ provided such directive was legally effective  
9 when written.

10 Section 19. Subsections (1) and (3) of section  
11 765.104, Florida Statutes, are amended to read:

12 765.104 Amendment or revocation.--

13 (1) An advance directive or designation of a surrogate  
14 may be amended or revoked at any time by a competent  
15 principal:

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

17 (b) By means of the physical cancellation or  
18 destruction of the advance directive by the principal or by  
19 another in the principal's presence and at the principal's  
20 direction;

21 (c) By means of an oral expression of intent to amend  
22 or revoke; or

23 (d) By means of a subsequently executed advance  
24 directive that is materially different from a previously  
25 executed advance directive.

26 (3) Any such amendment or revocation will be effective  
27 when it is communicated to the surrogate, health care  
28 provider, or health care facility. No civil or criminal  
29 liability shall be imposed upon any person for a failure to  
30 act upon an amendment or ~~a~~ revocation unless that person has  
31 actual knowledge of such amendment or revocation.

1           Section 20. Section 765.107, Florida Statutes, is  
2 amended to read:

3           765.107 Construction.--

4           (1) This chapter shall not be construed to repeal by  
5 implication any provision of s. 766.103, the Florida Medical  
6 Consent Law. For all purposes, the Florida Medical Consent  
7 Law shall be considered an alternative to provisions of this  
8 section.

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

13           Section 21. Section 765.110, Florida Statutes, is  
14 amended to read:

15           765.110 Health care facilities and providers;  
16 discipline.--

17           (1) A health care facility, pursuant to Pub. L. No.  
18 101-508, ss. 4206 and 4751, shall provide to each patient  
19 written information concerning the individual's rights  
20 concerning advance directives and the health care facility's  
21 policies respecting the implementation of such rights, and  
22 shall document in the patient's medical records whether or not  
23 the individual has executed an advance directive.

24           (2) A health care provider or health care facility may  
25 not require a patient to execute an advance directive or to  
26 execute a new advance directive using the facility's or  
27 provider's forms. The patient's advance directives shall  
28 travel with the patient as part of the patient's medical  
29 record.

30           ~~(3)~~~~(2)~~ A health care provider or health care facility  
31 shall be subject to professional discipline and revocation of

1 license or certification, and a fine of not more than \$1,000  
2 ~~\$500~~ per incident, or both, if the health care provider or  
3 health care facility, as a condition of treatment or  
4 admission, requires an individual to execute or waive an  
5 advance directive.

6 (4)(3) The Department of Elderly Affairs for hospices  
7 and, in consultation with the Department of Elderly Affairs,  
8 the Department of Health for health care providers, and  
9 Rehabilitative Services and the Agency for Health Care  
10 Administration for hospitals, nursing homes, home health  
11 agencies, and health maintenance organizations, and the  
12 Department of Children and Family Services for facilities  
13 subject to part I of chapter 394 shall adopt rules to  
14 implement the provisions of the section.

15 Section 22. Subsection (2) of section 765.204, Florida  
16 Statutes, is amended to read:

17 765.204 Capacity of principal; procedure.--

18 (2) If a principal's capacity to make health care  
19 decisions for herself or himself or provide informed consent  
20 is in question, the attending physician shall evaluate the  
21 principal's capacity. If the attending physician concludes  
22 that the principal lacks ~~such~~ capacity, another physician  
23 shall also evaluate the principal's capacity. If the second  
24 physician agrees that the principal lacks the capacity to make  
25 health care decisions or provide informed consent, the health  
26 care facility shall enter both physician's evaluations in the  
27 principal's clinical record and, if the principal has  
28 designated a health care surrogate, shall notify such  
29 surrogate in writing that her or his authority under the  
30 instrument has commenced.

31

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

3           765.205 Responsibility of the surrogate.--

4           (2) The surrogate may authorize the release of  
5 information and clinical records to appropriate persons to  
6 ensure the continuity of the principal's health care and may  
7 authorize the ~~transfer and~~ admission, discharge, or transfer  
8 of the principal to or from a health care facility or other  
9 facility or program licensed under chapter 400.

10          Section 24. Section 765.301, Florida Statutes, is  
11 amended to read:

12          765.301 Short title.--Sections 765.302-765.309  
13 ~~765.302-765.310~~ may be cited as the "Life-Prolonging Procedure  
14 Act of Florida."

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

17          765.302 Procedure for making a living will; notice to  
18 physician.--

19          (1) Any competent adult may, at any time, make a  
20 living will or written declaration directing the providing,  
21 withholding, or withdrawal of life-prolonging procedures ~~in~~  
22 ~~the event such person suffers from a terminal condition.~~ A  
23 living will must be signed by the principal in the presence of  
24 two subscribing witnesses, one of whom is neither a spouse nor  
25 a blood relative of the principal. If the principal is  
26 physically unable to sign the living will, one of the  
27 witnesses must subscribe the principal's signature in the  
28 principal's presence and at the principal's direction.

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

31          765.303 Suggested form of a living will.--

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

3   Living Will

4           Declaration made this .... day of ....., 19 .... I,  
5 ....., willfully and voluntarily make known my desire that  
6 my dying not be artificially prolonged under the circumstances  
7 set forth below, and I do hereby declare that, if at any time  
8 I am both mentally and physically incapacitated

9  
10 .... and I have a terminal condition(initial to require this  
11 as a condition for your living will)

12  
13 and if my attending or treating physician and another  
14 consulting physician have determined that there is no  
15 reasonable medical probability of my recovery from such  
16 condition, I direct that life-prolonging procedures be  
17 withheld or withdrawn when the application of such procedures  
18 would serve only to prolong artificially the process of dying,  
19 and that I be permitted to die naturally with only the  
20 administration of medication or the performance of any medical  
21 procedure deemed necessary to provide me with comfort care or  
22 to alleviate pain.

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

27           In the event that I have been determined to be unable  
28 to provide express and informed consent regarding the  
29 withholding, withdrawal, or continuation of life-prolonging  
30 procedures, I wish to designate, as my surrogate to carry out  
31 the provisions of this declaration:

1  
2 Name:.....  
3 Address:.....  
4 ..... Zip Code:..  
5 Phone:.....  
6       I understand the full import of this declaration, and I  
7 am emotionally and mentally competent to make this  
8 declaration.  
9 Additional Instructions (optional):  
10 .....  
11 .....  
12 .....  
13                               ....(Signed)....  
14                               ....Witness....  
15                               ....Address....  
16                               ....Phone....  
17                               ....Witness....  
18                               ....Address....  
19                               ....Phone....  
20  
21       Section 27. Subsection (2) of section 765.304, Florida  
22 Statutes, is amended to read:  
23       765.304 Procedure for living will.--  
24       (2) Before proceeding in accordance with the  
25 principal's living will, it must be determined that:  
26       (a) The principal does not have a reasonable  
27 probability of recovering capacity ~~competency~~ so that the  
28 right could be exercised directly by the principal.  
29       ~~(b) The principal's physical condition is terminal.~~  
30  
31



1           **(b)**~~(c)~~ Any limitations or conditions expressed orally  
2 or in a written declaration have been carefully considered and  
3 satisfied.

4           Section 28. Section 765.305, Florida Statutes, is  
5 amended to read:

6           765.305 Procedure in absence of a living will.--

7           (1) In the absence of a living will ~~executed pursuant~~  
8 ~~to s. 765.303~~, the decision to withhold or withdraw  
9 life-prolonging procedures from a patient may be made by a  
10 health care surrogate designated by the patient pursuant to  
11 part II unless the designation limits the surrogate's  
12 authority to consent to the withholding or withdrawal of  
13 life-prolonging procedures.

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

16           (a) The patient does not have a reasonable probability  
17 of recovering capacity ~~competency~~ so that the right could be  
18 exercised by the patient.

19           (b) The patient is both mentally and physically  
20 incapacitated with no reasonable medical probability of  
21 recovery or the patient's physical condition is terminal.

22           Section 29. Section 765.306, Florida Statutes, is  
23 amended to read:

24           765.306 Determination of patient condition.--In  
25 determining whether the patient has a terminal condition or  
26 may recover mental and physical capacity, or whether a medical  
27 condition or limitation referred to in an advance directive  
28 exists, the patient's attending or treating physician and at  
29 least one other consulting physician must ~~separately~~ examine  
30 the patient. The findings of each such examination must be  
31 documented in the patient's medical record and signed by each

1 examining physician before life-prolonging procedures may be  
2 withheld or withdrawn.

3 Section 30. Section 765.308, Florida Statutes, is  
4 renumbered as section 765.1105, Florida Statutes, and amended  
5 to read:

6 765.1105 ~~765.308~~ Transfer of a patient.--

7 (1) A health care provider or facility that refuses to  
8 comply with a patient's advance directive ~~the declaration of a~~  
9 ~~patient~~, or the treatment decision of his or her surrogate,  
10 shall make reasonable efforts to transfer the patient to  
11 another health care provider or facility that will comply with  
12 the directive ~~declaration~~ or treatment decision. This chapter  
13 does not require a health care provider or facility to commit  
14 any act which is contrary to the provider's or facility's  
15 moral or ethical beliefs ~~concerning life-prolonging~~  
16 ~~procedures~~, if the patient:

17 (a) Is not in an emergency condition; ~~and~~

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

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

25 (a) Transfer the patient to another health care  
26 provider or facility. The health care provider or facility  
27 shall pay the costs for transporting the patient to another  
28 health care provider or facility; or

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

1           Section 31. Section 765.310, Florida Statutes, is  
2 renumbered as section 765.1115, Florida Statutes, and amended  
3 to read:

4           765.1115 ~~765.310~~ Falsification, forgery, or willful  
5 concealment, cancellation, or destruction of directive  
6 ~~declaration~~ or revocation or amendment; penalties.--

7           (1) Any person who willfully conceals, cancels,  
8 defaces, obliterates, or damages an advance directive ~~a living~~  
9 ~~will~~ without the principal's consent or who falsifies or  
10 forges the revocation or amendment of an advance directive ~~a~~  
11 ~~revocation of a living will~~ of another, and who thereby causes  
12 life-prolonging procedures to be utilized in contravention of  
13 the previously expressed intent of the principal, commits a  
14 felony of the third degree, punishable as provided in s.  
15 775.082, s. 775.083, or s. 775.084.

16           (2) Any person who falsifies or forges the advance  
17 directive ~~living will~~ of another or who willfully conceals or  
18 withholds personal knowledge of the revocation of an advance  
19 directive ~~a declaration~~, with the intent to cause a  
20 withholding or withdrawal of life-prolonging procedures  
21 contrary to the wishes of the principal, and who thereby  
22 because of such act directly causes life-prolonging procedures  
23 to be withheld or withdrawn and death to be hastened, commits  
24 a felony of the second degree, punishable as provided in s.  
25 775.082, s. 775.083, or s. 775.084.

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

28           765.401 The proxy.--

29           (3) Before exercising the incapacitated patient's  
30 rights to select or decline health care, the proxy must comply  
31 with the pertinent provisions applicable to surrogates under

1 this chapter, except that a proxy's decision to withhold or  
2 withdraw life-prolonging procedures must either:

- 3       (a) Be supported by a written declaration; or  
4       (b) If there is no written declaration, the patient  
5 must be terminally ill or in a persistent vegetative state,  
6 and the proxy's decision must be supported by clear and  
7 convincing evidence that the decision would have been the one  
8 the patient would have chosen had the patient been competent.

9       Section 33. Section 765.404, Florida Statutes, is  
10 created to read:

11       765.404 Persistent vegetative state.--For persons in a  
12 persistent vegetative state who have no advance directive and  
13 for whom there is no evidence indicating what the person would  
14 have wanted under such conditions, and who have no family or  
15 friends available or willing to serve as a proxy to make  
16 health care decisions for them, life-prolonging procedures may  
17 be withheld or withdrawn under the following conditions:

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

21       (2) The guardian, in consultation with the person's  
22 attending physician and the medical ethics committee of the  
23 facility where the patient is located, concludes that the  
24 condition is permanent and that there is no reasonable hope  
25 for recovery. If there is no medical ethics committee at the  
26 facility, the facility must have an arrangement with the  
27 medical ethics committee of another facility or with a  
28 community-based ethics committee approved by the Florida  
29 Bio-ethics Network. The ethics committee shall review the case  
30 with the guardian, in consultation with the person's attending  
31 physician, to determine whether the condition is permanent and

1 there is no reasonable hope for recovery. The individual  
2 committee members and the facility associated with an ethics  
3 committee shall not be held liable in any civil action related  
4 to the performance of any duties required in this subsection.

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

12 Section 35. Effective July 1, 1999:

13 (1) Subsection (6) of section 3 of chapter 98-327,  
14 Laws of Florida, is repealed and the Panel for the Study of  
15 End-of-Life Care created by said section is continued until  
16 January 31, 2000.

17 (2) To support the work of the panel, the sum of  
18 \$100,000 is appropriated from the General Revenue Fund to the  
19 Pepper Institute on Aging and Public Policy at Florida State  
20 University.

21 (3) The panel shall submit its final report to the  
22 Legislature no later than January 31, 2000.

23 Section 35. Except as otherwise provide herein, this  
24 act shall take effect October 1, 1999.

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HOUSE SUMMARY

Provides legislative findings regarding end-of-life care. Provides for demonstration projects under the Secretary of Health and a working group to review certain curricula. Authorizes emergency medical technicians, paramedics, and personnel of hospital emergency services, long-term care facilities, assisted living facilities, home health agencies, hospices, and adult family-care homes to withhold or withdraw cardiopulmonary resuscitation pursuant to an order not to resuscitate. Provides protection from criminal prosecution, civil liability, and charges of negligent or unprofessional conduct for such action. Directs the Department of Health to develop a standardized do-not-resuscitate identification system, and authorizes a fee therefor. Revises provisions relating to anatomical gifts of advance directives, health care surrogates and proxies, and living wills. Increases a penalty for health care facilities or providers that require patients to execute advance directives. Requires advance directives to become part of patients' medical records. Provides penalties for cancellation, or destruction of an advance directive, rather than a living will. Provides conditions for withholding or withdrawing life-prolonging procedures for persons in a persistent vegetative state when there is no advance directive or health care proxy. Directs the Department of Elderly Affairs to convene a workgroup to develop model advance directive forms. Continues the Panel for the Study of End-of-Life Care until January 31, 2000, and provides an appropriation therefor. See bill for details.