

By the Committee on Health, Aging and Long-Term Care; and
Senator Klein

317-1879-99

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.

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

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

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. Section 400.142, Florida Statutes, is
15 amended to read:

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

18 (1) Other provisions of this chapter or of chapter
19 465, chapter 499, or chapter 893 to the contrary
20 notwithstanding, each nursing home operating pursuant to a
21 license issued by the agency may maintain an emergency
22 medication kit for the purpose of storing medicinal drugs to
23 be administered under emergency conditions to residents
24 residing in such facility.

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

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

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

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1 (c) Establish requirements for the storing of
2 medicinal drugs in emergency medication kits and the
3 maintenance of records with respect thereto.

4 (d) Establish requirements for the administration of
5 medicinal drugs to residents under emergency conditions from
6 emergency medication kits.

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

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

18 400.4255 Use of ~~licensed~~ personnel; emergency care.--

19 (1)(a) Persons under contract to the facility,
20 facility staff, or volunteers, who are licensed according to
21 chapter 464, or those persons exempt under s. 464.022(1), and
22 others as defined by rule, may administer medications to
23 residents, take residents' vital signs, manage individual
24 weekly pill organizers for residents who self-administer
25 medication, give prepackaged enemas ordered by a physician,
26 observe residents, document observations on the appropriate
27 resident's record, report observations to the resident's
28 physician, and contract or allow residents or a resident's
29 representative, designee, surrogate, guardian, or attorney in
30 fact to contract with a third party, provided residents meet
31 the criteria for appropriate placement as defined in s.

1 400.426. Nursing assistants certified pursuant to s. 400.211
2 may take residents' vital signs as directed by a licensed
3 nurse or physician.

4 (b) All staff in facilities licensed under this part
5 shall exercise their professional responsibility to observe
6 residents, to document observations on the appropriate
7 resident's record, and to report the observations to the
8 resident's physician. However, the owner or administrator of
9 the facility shall be responsible for determining that the
10 resident receiving services is appropriate for residence in
11 the facility.

12 (c) In an emergency situation, licensed personnel may
13 carry out their professional duties pursuant to chapter 464
14 until emergency medical personnel assume responsibility for
15 care.

16 (2) In facilities licensed to provide extended
17 congregate care, persons under contract to the facility,
18 facility staff, or volunteers, who are licensed according to
19 chapter 464, or those persons exempt under s. 464.022(1), or
20 those persons certified as nursing assistants pursuant to s.
21 400.211, may also perform all duties within the scope of their
22 license or certification, as approved by the facility
23 administrator and pursuant to this part.

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

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1 withholding or withdrawing cardiopulmonary resuscitation
2 pursuant to such an order and rules adopted by the department.

3 Section 5. Section 400.487, Florida Statutes, is
4 amended to read:

5 400.487 Patient assessment; establishment and review
6 of plan of care; provision of services; orders not to
7 resuscitate.--

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

11 (2) The attending physician for a patient receiving
12 care or treatment provided by a licensed nurse or by a
13 physical, occupational, or speech therapist must establish a
14 plan of care for the patient on behalf of the home health
15 agency that provides services to the patient. The original
16 plan of treatment must be signed by the physician and
17 reviewed, at least every 62 days or more frequently if the
18 patient's illness requires, by the physician in consultation
19 with home health agency personnel that provide services to the
20 patient.

21 (3) Each patient has the right to be informed of and
22 to participate in the planning of his or her care. Each
23 patient must be provided, upon request, a copy of the plan of
24 care established and maintained for that patient by the home
25 health agency.

26 (4) Home health services that are provided to a
27 patient must be evaluated in the patient's home by a physician
28 licensed under chapter 458, chapter 459, chapter 460, or
29 chapter 461 or by a registered nurse licensed under chapter
30 464 as frequently as necessary to assure safe and adequate
31 care, but not less frequently than once every 62 days.

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

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

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

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

22 400.6095 Patient admission; assessment; plan of care;
23 discharge; death.--

24 (8) The hospice care team may withhold or withdraw
25 cardiopulmonary resuscitation if presented with an order not
26 to resuscitate executed pursuant to s. 401.45. The department
27 shall adopt rules providing for the implementation of such
28 orders. Hospice staff shall not be subject to criminal
29 prosecution or civil liability, nor be considered to have
30 engaged in negligent or unprofessional conduct, for

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1 withholding or withdrawing cardiopulmonary resuscitation
2 pursuant to such an order and rules adopted by the department.

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

7 400.621 Rules and standards relating to adult
8 family-care homes.--

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

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

21 401.45 Denial of emergency treatment; civil
22 liability.--

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

29 (b) Any licensee, physician, medical director, or
30 emergency medical technician or paramedic who acts under the
31 direction of a medical director is not subject to criminal

1 prosecution or civil liability, and has not engaged in
2 negligent or unprofessional conduct, as a result of the
3 withholding or withdrawal of resuscitation ~~or life-prolonging~~
4 ~~techniques~~ from a patient pursuant to this subsection and
5 rules adopted by the department.

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

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

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

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

26 455.604 Requirement for instruction for certain
27 licensees on human immunodeficiency virus and acquired immune
28 deficiency syndrome.--

29 (9) In lieu of completing a course as required in
30 subsection (1), the licensee may complete a course in
31 end-of-life care and palliative health care, so long as the

1 licensee completed an approved AIDS/HIV course in the
2 immediately preceding biennium.

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

5 458.319 Renewal of license.--

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

12 Section 11. Subsection (5) is added to section
13 459.008, Florida Statutes, 1998 Supplement, to read:

14 459.008 Renewal of licenses and certificates.--

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

21 Section 12. Section 732.912, Florida Statutes, 1998
22 Supplement, is amended to read:

23 732.912 Persons who may make an anatomical gift.--

24 (1) Any person who may make a will may give all or
25 part of his or her body for any purpose specified in s.
26 732.910, the gift to take effect upon death. An anatomical
27 gift made by an adult donor and not revoked by the donor as
28 provided in s. 732.916 is irrevocable and does not require the
29 consent or concurrence of any person after the donor's death.

30 (2) If the decedent has ~~not~~ executed an agreement
31 concerning an anatomical gift, including signing an organ and

1 tissue donor card, expressing his or her wish to donate in a
2 living will or advance directive, or signifying his or her
3 intent to donate on his or her driver's license or in some
4 other written form has indicated his or her wish to make an
5 anatomical gift,~~a member of one of the classes of persons~~
6 ~~listed below, in the order of priority stated and in the~~
7 ~~absence of actual notice of contrary indications by the~~
8 ~~decedent or actual notice of opposition by a member of the~~
9 ~~same or a prior class, the surrogate designated by the~~
10 decedent pursuant to part II of chapter 765 may give all or
11 any part of the decedent's body for any purpose specified in
12 s. 732.910.÷

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

- 23 (a) The spouse of the decedent;
24 (b) An adult son or daughter of the decedent;
25 (c) Either parent of the decedent;
26 (d) An adult brother or sister of the decedent;
27 (e) A grandparent of the decedent;
28 (f) A guardian of the person of the decedent at the
29 time of his or her death; or
30 (g) A representative ad litem who shall be appointed
31 by a court of competent jurisdiction forthwith upon a petition

1 heard ex parte filed by any person, which representative ad
2 litem shall ascertain that no person of higher priority exists
3 who objects to the gift of all or any part of the decedent's
4 body and that no evidence exists of the decedent's having made
5 a communication expressing a desire that his or her body or
6 body parts not be donated upon death;

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8 but no gift shall be made by the spouse if any adult son or
9 daughter objects, and provided that those of higher priority,
10 if they are reasonably available, have been contacted and made
11 aware of the proposed gift, and further provided that a
12 reasonable search is made to show that there would have been
13 no objection on religious grounds by the decedent.

14 (4)~~(3)~~ If the donee has actual notice of contrary
15 indications by the decedent or, in the case of a spouse making
16 the gift, an objection of an adult son or daughter or actual
17 notice that a gift by a member of a class is opposed by a
18 member of the same or a prior class, the donee shall not
19 accept the gift.

20 (5)~~(4)~~ The person authorized by subsection (3)~~(2)~~ may
21 make the gift after the decedent's death or immediately before
22 the decedent's death.

23 (6)~~(5)~~ A gift of all or part of a body authorizes any
24 examination necessary to assure medical acceptability of the
25 gift for the purposes intended.

26 (7)~~(6)~~ Once the gift has been made, the rights of the
27 donee are paramount to the rights of others, except as
28 provided by s. 732.917.

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

31 732.914 Manner of executing anatomical gifts.--

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

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

7 732.917 Rights and duties at death.--

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

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

23 732.922 Duty of certain hospital administrators;
24 liability of hospital administrators, organ procurement
25 organizations, eye banks, and tissue banks.--

26 (2) Where, based on accepted medical standards, a
27 hospital patient is a suitable candidate for organ or tissue
28 donation, the hospital administrator or the hospital
29 administrator's designee shall, at or near the time of death,
30 access the organ and tissue donor registry created by s.
31 732.915(4) to ascertain the existence of a donor card or

1 document executed by the decedent. In the absence of a donor
2 card, organ donation sticker or organ donation imprint on a
3 driver's license, or other properly executed document, the
4 hospital administrator or designee shall request:

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

7 (b) If the patient does not have a surrogate, or the
8 surrogate is not reasonably available,any of the persons
9 specified in s. 732.912, in the order and manner of priority
10 stated in s. 732.912,

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12 to consent to the gift of all or any part of the decedent's
13 body for any purpose specified in this part. Except as
14 provided in s. 732.912, in the absence of actual notice of
15 opposition, consent need only be obtained from the person or
16 persons in the highest priority class reasonably available.

17 Section 16. Section 765.101, Florida Statutes, is
18 amended to read:

19 765.101 Definitions.--As used in this chapter:

20 (1) "Advance directive" means a witnessed written
21 document or oral statement in which instructions are given by
22 a principal or in which the principal's desires are expressed
23 concerning any aspect of the principal's health care, and
24 includes, but is not limited to, the designation of a health
25 care surrogate, a living will, or an anatomical gift made
26 pursuant to part X of chapter 732 ~~orders not to resuscitate~~
27 ~~issued pursuant to s. 401.45.~~

28 (2) "Attending physician" means the primary physician
29 who has responsibility for the treatment and care of the
30 patient.

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

10 (4) "Health care decision" means:

11 (a) Informed consent, refusal of consent, or
12 withdrawal of consent to any and all health care, including
13 life-prolonging procedures.

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

17 (c) The right of access to all records of the
18 principal reasonably necessary for a health care surrogate to
19 make decisions involving health care and to apply for
20 benefits.

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

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

27 (6) "Health care provider" or "provider" means any
28 person licensed, certified, or otherwise authorized by law to
29 administer health care in the ordinary course of business or
30 practice of a profession.

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

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

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

18 ~~(a) Utilizes mechanical or other artificial means to~~
19 ~~sustain, restore, or supplant a spontaneous vital function;~~
20 ~~and~~

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

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

28 (10) "Living will" or "declaration" means:

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

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1 (b) A witnessed oral statement made by the principal
2 expressing the principal's instructions concerning
3 life-prolonging procedures.

4 (11) "Persistent vegetative state" means a permanent
5 and irreversible condition of unconsciousness in which there
6 is:

7 (a) The absence of voluntary action or cognitive
8 behavior of any kind.

9 (b) An inability to communicate or interact
10 purposefully with the environment.

11 (12)~~(11)~~ "Physician" means a person licensed pursuant
12 to chapter 458 or chapter 459.

13 (13)~~(12)~~ "Principal" means a competent adult executing
14 an advance directive and on whose behalf health care decisions
15 are to be made.

16 (14)~~(13)~~ "Proxy" means a competent adult who has not
17 been expressly designated to make health care decisions for a
18 particular incapacitated individual, but who, nevertheless, is
19 authorized pursuant to s. 765.401 to make health care
20 decisions for such individual.

21 (15)~~(14)~~ "Surrogate" means any competent adult
22 expressly designated by a principal to make health care
23 decisions on behalf of the principal upon the principal's
24 incapacity.

25 ~~(15) "Terminal condition" means:~~

26 ~~(a) A condition caused by injury, disease, or illness~~
27 ~~from which there is no reasonable probability of recovery and~~
28 ~~which, without treatment, can be expected to cause death; or~~

29 ~~(b) A persistent vegetative state characterized by a~~
30 ~~permanent and irreversible condition of unconsciousness in~~
31 ~~which there is:~~

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

3 ~~2. An inability to communicate or interact~~
4 ~~purposefully with the environment.~~

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

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

11 765.102 Legislative findings and intent.--

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

31

1 Section 18. Section 765.103, Florida Statutes, is
2 amended to read:

3 765.103 Existing advance directives.--Any advance
4 directive made prior to the effective date of this act ~~April~~
5 ~~10, 1992,~~ shall be given effect as executed, ~~as provided in~~
6 ~~this chapter~~ provided such directive was legally effective
7 when written.

8 Section 19. Section 765.104, Florida Statutes, is
9 amended to read:

10 765.104 Amendment or revocation.--

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

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

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

19 (c) By means of an oral expression of intent to amend
20 or revoke; or

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

24 (2) Unless otherwise provided in the advance directive
25 or in an order of dissolution or annulment of marriage, the
26 dissolution or annulment of marriage of the principal revokes
27 the designation of the principal's former spouse as a
28 surrogate.

29 (3) Any such amendment or revocation will be effective
30 when it is communicated to the surrogate, health care
31 provider, or health care facility. No civil or criminal

1 liability shall be imposed upon any person for a failure to
2 act upon an amendment or a revocation unless that person has
3 actual knowledge of such amendment or revocation.

4 Section 20. Section 765.107, Florida Statutes, is
5 amended to read:

6 765.107 Construction.--

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

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

16 Section 21. Section 765.110, Florida Statutes, is
17 amended to read:

18 765.110 Health care facilities and providers;
19 discipline.--

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

27 (2) A health care provider or health care facility may
28 not require a patient to execute an advance directive or to
29 execute a new advance directive using the facility's or
30 provider's forms. The patient's advance directives shall

31

1 travel with the patient as part of the patient's medical
2 record.

3 (3)(2) A health care provider or health care facility
4 shall be subject to professional discipline and revocation of
5 license or certification, and a fine of not more than \$1,000
6 ~~\$500~~ per incident, or both, if the health care provider or
7 health care facility, as a condition of treatment or
8 admission, requires an individual to execute or waive an
9 advance directive.

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

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

21 765.204 Capacity of principal; procedure.--

22 (2) If a principal's capacity to make health care
23 decisions for herself or himself or provide informed consent
24 is in question, the attending physician shall evaluate the
25 principal's capacity. If the attending physician concludes
26 that the principal lacks ~~such~~ capacity, another physician
27 shall also evaluate the principal's capacity. If the second
28 physician agrees that the principal lacks the capacity to make
29 health care decisions or provide informed consent, the health
30 care facility shall enter both physician's evaluations in the
31 principal's clinical record and, if the principal has

1 designated a health care surrogate, shall notify such
2 surrogate in writing that her or his authority under the
3 instrument has commenced.

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

6 765.205 Responsibility of the surrogate.--

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

13 Section 24. Section 765.301, Florida Statutes, is
14 amended to read:

15 765.301 Short title.--Sections 765.302-765.309
16 ~~765.302-765.310~~ may be cited as the "Life-Prolonging Procedure
17 Act of Florida."

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

20 765.302 Procedure for making a living will; notice to
21 physician.--

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

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

3 765.303 Suggested form of a living will.--

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

6 Living Will

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

12(initial).... and I have a terminal condition

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

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

28 In the event that I have been determined to be unable
29 to provide express and informed consent regarding the
30 withholding, withdrawal, or continuation of life-prolonging
31

1 procedures, I wish to designate, as my surrogate to carry out
2 the provisions of this declaration:

3
4 Name:.....
5 Address:.....
6 Zip Code:..
7 Phone:.....

8 I understand the full import of this declaration, and I
9 am emotionally and mentally competent to make this
10 declaration.

11 Additional Instructions (optional):
12
13
14

15(Signed).....
16Witness....
17Address....
18Phone....
19Witness....
20Address....
21Phone....

22
23 Section 27. Subsection (2) of section 765.304, Florida
24 Statutes, is amended to read:

25 765.304 Procedure for living will.--

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

28 (a) The principal does not have a reasonable
29 probability of recovering capacity ~~competency~~ so that the
30 right could be exercised directly by the principal.

31 ~~(b) The principal's physical condition is terminal.~~

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 that 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 expressly provided in
24 this act, this act shall take effect October 1, 1999.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 2228

4 Provides legislative findings related to demographic
5 characteristics of the state; the recommendations of the Panel
6 for the Study of End-of-Life Care (Panel); that all persons
7 should have access to effective pain management and palliative
8 care; that a person's experience of death and dying, and
9 preferences about end-of-life care are rooted in ethnic and
10 cultural values and beliefs; that social, health, and
11 education practitioners must be trained to work within
12 cultural parameters; that measurement of pain as a "fifth
13 vital sign" would aid health care providers in more
14 aggressively assessing and managing pain; that health care
15 providers should feel safe from blame or discipline for using
16 adequate medication to effectively manage pain; and that the
17 State Supreme Court has declared, on the constitutional right
18 to privacy, that competent adults can express their wishes to
19 receive, refuse, withhold, or withdraw any medical treatment
20 and that the right continues even when a person becomes
21 incapacitated.

22 Authorizes the Secretary of the Department of Health to
23 develop and implement up to two demonstration projects to
24 evaluate strategies recommended by the Panel, reporting to the
25 Legislature by January 30 of each year on project results, and
26 authorizes the department to apply for grants and accept
27 donations.

28 Requests the chancellor of the State University System to
29 convene a working group to review available curricula for
30 end-of-life care and make recommendations through the
31 respective health-related professional regulatory boards for
content and materials to be included in the curriculum of each
medical, social work, and allied health discipline's school.

32 Adds liability protection relating to honoring
33 do-not-resuscitate orders for nursing homes, assisted living
34 facilities, home health agencies, and adult family-care home
35 providers.

36 Authorizes health care providers to substitute a continuing
37 education course on end-of-life care, for purposes of
38 licensure or certification renewal, for the human
39 immuno-deficiency virus course, if this course has been taken
40 in a previous licensure cycle.

41 Requires that hospital administrators request consent for
42 organ or tissue donation from the decedent's health care
43 surrogate then, if the decedent has not designated a health
44 care surrogate, a person listed in the priority list of
45 persons who may consent to an anatomical gift under chapter
46 732, F.S., when the decedent has not executed a donor card or
47 document.

48 Clarifies that the provisions of chapter 765, F.S., providing
49 for advance directives, do not apply to a person who never had
50 capacity to designate a health care surrogate or to execute a
51 living will.

1 Continues the existence of the Panel for the Study of
2 End-of-Life Care until January 31, 2000, provides an
3 appropriation of \$100,000 from the General Revenue Fund to the
4 Pepper Institute on Aging and Public Policy at Florida State
5 University, and requires the Panel to submit its final report
6 to the Legislature by January 31, 2000.
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