

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

308-2065-99

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, 400.621, F.S.; authorizing
10 personnel of hospital emergency services,
11 long-term care facilities, assisted living
12 facilities, home health agencies, hospices, and
13 adult family-care homes to withhold or withdraw
14 cardiopulmonary resuscitation pursuant to an
15 order not to resuscitate; providing for rules;
16 providing certain protection from prosecution
17 and liability; amending s. 401.45, F.S.;
18 revising authority of emergency medical
19 technicians and paramedics to withhold or
20 withdraw resuscitation or life-prolonging
21 techniques; directing the Department of Health
22 to develop a standardized do-not-resuscitate
23 identification system; authorizing a fee;
24 providing for rules; amending ss. 455.604,
25 458.319, 459.008, F.S.; providing that courses
26 on end-of-life care will fulfill certain
27 education requirements; amending s. 732.912,
28 F.S.; revising provisions relating to who may
29 make anatomical gifts; amending ss. 732.914,
30 732.917, F.S.; correcting cross-references;
31 amending s. 732.922, F.S.; conforming

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

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

23

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

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

27 (1)(a) The Legislature finds that Florida, as the
28 fourth most populous state, is highly diverse with regard to
29 race, ethnicity, urban and rural locales, religious practices,
30 and cultural traditions. Florida has the largest percentage of
31 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 (5) The department shall adopt and enforce all rules
17 necessary to implement this section.

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

20 455.604 Requirement for instruction for certain
21 licensees on human immunodeficiency virus and acquired immune
22 deficiency syndrome.--

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

28 Section 10. Subsection (4) is added to section
29 458.319, Florida Statutes, 1998 Supplement, to read:

30 458.319 Renewal of license.--

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

7 Section 11. Subsection (5) is added to section
8 459.008, Florida Statutes, 1998 Supplement, to read:

9 459.008 Renewal of licenses and certificates.--

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

16 Section 12. Section 732.912, Florida Statutes, 1998
17 Supplement, is amended to read:

18 732.912 Persons who may make an anatomical gift.--

19 (1) Any person who may make a will may give all or
20 part of his or her body for any purpose specified in s.
21 732.910, the gift to take effect upon death. An anatomical
22 gift made by an adult donor and not revoked by the donor as
23 provided in s. 732.916 is irrevocable and does not require the
24 consent or concurrence of any person after the donor's death.

25 (2) If the decedent has ~~not~~ executed an agreement
26 concerning an anatomical gift, including signing an organ and
27 tissue donor card, expressing his or her wish to donate in a
28 living will or advance directive, or signifying his or her
29 intent to donate on his or her driver's license or in some
30 other written form has indicated his or her wish to make an
31 anatomical gift,~~a member of one of the classes of persons~~

1 ~~listed below, in the order of priority stated~~ and in the
2 absence of actual notice of contrary indications by the
3 decedent ~~or actual notice of opposition by a member of the~~
4 ~~same or a prior class, the surrogate designated by the~~
5 decedent pursuant to part II of chapter 765 may give all or
6 any part of the decedent's body for any purpose specified in
7 s. 732.910.†

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

- 18 (a) The spouse of the decedent;
19 (b) An adult son or daughter of the decedent;
20 (c) Either parent of the decedent;
21 (d) An adult brother or sister of the decedent;
22 (e) A grandparent of the decedent;
23 (f) A guardian of the person of the decedent at the
24 time of his or her death; or
25 (g) A representative ad litem who shall be appointed
26 by a court of competent jurisdiction forthwith upon a petition
27 heard ex parte filed by any person, which representative ad
28 litem shall ascertain that no person of higher priority exists
29 who objects to the gift of all or any part of the decedent's
30 body and that no evidence exists of the decedent's having made
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1 a communication expressing a desire that his or her body or
2 body parts not be donated upon death;

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

10 (4)~~(3)~~ If the donee has actual notice of contrary
11 indications by the decedent or, in the case of a spouse making
12 the gift, an objection of an adult son or daughter or actual
13 notice that a gift by a member of a class is opposed by a
14 member of the same or a prior class, the donee shall not
15 accept the gift.

16 (5)~~(4)~~ The person authorized by subsection (3)~~(2)~~ may
17 make the gift after the decedent's death or immediately before
18 the decedent's death.

19 (6)~~(5)~~ A gift of all or part of a body authorizes any
20 examination necessary to assure medical acceptability of the
21 gift for the purposes intended.

22 (7)~~(6)~~ Once the gift has been made, the rights of the
23 donee are paramount to the rights of others, except as
24 provided by s. 732.917.

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

27 732.914 Manner of executing anatomical gifts.--

28 (5) Any gift by a member of a class designated in s.
29 732.912 (3)~~(2)~~ must be made by a document signed by that person
30 or made by that person's witnessed telephonic discussion,
31 telegraphic message, or other recorded message.

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

3 732.917 Rights and duties at death.--

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

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

19 732.922 Duty of certain hospital administrators;
20 liability of hospital administrators, organ procurement
21 organizations, eye banks, and tissue banks.--

22 (2) Where, based on accepted medical standards, a
23 hospital patient is a suitable candidate for organ or tissue
24 donation, the hospital administrator or the hospital
25 administrator's designee shall, at or near the time of death,
26 access the organ and tissue donor registry created by s.
27 732.915(4) to ascertain the existence of a donor card or
28 document executed by the decedent. In the absence of a donor
29 card, organ donation sticker or organ donation imprint on a
30 driver's license, or other properly executed document, the
31 hospital administrator or designee shall request:

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

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

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

13 Section 16. Section 765.101, Florida Statutes, is
14 amended to read:

15 765.101 Definitions.--As used in this chapter:

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

24 (2) "Attending physician" means the primary physician
25 who has responsibility for the treatment and care of the
26 patient.

27 (3) "Close personal friend" means any person 18 years
28 of age or older who has exhibited special care and concern for
29 the patient, and who presents an affidavit to the health care
30 facility or to the attending or treating physician stating
31 that he or she is a friend of the patient; is willing and able

1 to become involved in the patient's health care; and has
2 maintained such regular contact with the patient so as to be
3 familiar with the patient's activities, health, and religious
4 or moral beliefs.

5 (4) "End-stage condition" means a condition that is
6 caused by injury, disease, or illness which has resulted in
7 severe and permanent deterioration, indicated by incapacity
8 and complete physical dependency, and for which, to a
9 reasonable degree of medical certainty, treatment of the
10 irreversible condition would be medically ineffective.

11 (5)(4) "Health care decision" means:

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

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

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

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

24 (6)(5) "Healthcare facility" means a hospital,
25 nursing home, hospice, home health agency, or health
26 maintenance organization licensed in this state, or any
27 facility subject to part I of chapter 394.

28 (7)(6) "Health care provider" or "provider" means any
29 person licensed, certified, or otherwise authorized by law to
30 administer health care in the ordinary course of business or
31 practice of a profession.

1 ~~(8)(7)~~ "Incapacity" or "incompetent" means the patient
2 is 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 ~~(9)(8)~~ "Informed consent" means consent voluntarily
7 given by a person after a sufficient explanation and
8 disclosure of the subject matter involved to enable that
9 person to have a general understanding of the treatment or
10 procedure and the medically acceptable alternatives, including
11 the substantial risks and hazards inherent in the proposed
12 treatment or alternative procedures, and to make a knowing
13 health care decision without coercion or undue influence.

14 ~~(10)(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.~~

23
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 ~~(11)(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 (12) "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 (13)~~(11)~~ "Physician" means a person licensed pursuant
12 to chapter 458 or chapter 459.

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

16 (15)~~(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 (16)~~(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 (17)~~(15)~~ "Terminal condition" means+

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

30
31

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 October 1, 1999, ~~April 10, 1992~~, shall
7 be given effect as executed, ~~as provided in this chapter~~
8 provided such directive was legally effective when written.

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

11 765.104 Amendment or revocation.--

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

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

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

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

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

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

30 (3) Any such amendment or revocation will be effective
31 when it is communicated to the surrogate, health care

1 provider, or health care facility. No civil or criminal
2 liability shall be imposed upon any person for a failure to
3 act upon an amendment or a revocation unless that person has
4 actual knowledge of such amendment or revocation.

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

7 765.107 Construction.--

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

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

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

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

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

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

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 and direct ~~directing~~ the
24 providing, withholding, or withdrawal of life-prolonging
25 procedures in the event that such person has a terminal
26 condition, has an end-stage condition, or is in a persistent
27 vegetative state ~~suffers from a terminal condition~~. A living
28 will must be signed by the principal in the presence of two
29 subscribing witnesses, one of whom is neither a spouse nor a
30 blood relative of the principal. If the principal is
31 physically unable to sign the living will, one of the

1 witnesses must subscribe the principal's signature in the
2 principal's presence and at the principal's direction.

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

5 765.303 Suggested form of a living will.--

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

8 Living Will

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

14(initial).... and I have a terminal condition
15 or(initial).... and I have an end-state condition
16 or(initial).... and I am in a persistent
17 vegetative state

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

29 It is my intention that this declaration be honored by
30 my family and physician as the final expression of my legal
31

1 right to refuse medical or surgical treatment and to accept
2 the consequences for such refusal.

3 In the event that I have been determined to be unable
4 to provide express and informed consent regarding the
5 withholding, withdrawal, or continuation of life-prolonging
6 procedures, I wish to designate, as my surrogate to carry out
7 the provisions of this declaration:

8
9 Name:.....
10 Address:.....
11 Zip Code:..
12 Phone:.....

13 I understand the full import of this declaration, and I
14 am emotionally and mentally competent to make this
15 declaration.

16 Additional Instructions (optional):
17
18
19

20(Signed)....
21Witness....
22Address....
23Phone....
24Witness....
25Address....
26Phone....

27
28 Section 27. Subsection (2) of section 765.304, Florida
29 Statutes, is amended to read:

30 765.304 Procedure for living will.--
31

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

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

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

9 (c) Any limitations or conditions expressed orally or
10 in a written declaration have been carefully considered and
11 satisfied.

12 Section 28. Section 765.305, Florida Statutes, is
13 amended to read:

14 765.305 Procedure in absence of a living will.--

15 (1) In the absence of a living will ~~executed pursuant~~
16 ~~to s. 765.303~~, the decision to withhold or withdraw
17 life-prolonging procedures from a patient may be made by a
18 health care surrogate designated by the patient pursuant to
19 part II unless the designation limits the surrogate's
20 authority to consent to the withholding or withdrawal of
21 life-prolonging procedures.

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

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

27 (b) The patient is both mentally and physically
28 incapacitated with no reasonable medical probability of
29 recovery, the patient has an end-stage condition, the patient
30 is in a persistent vegetative state, or the patient's physical
31 condition is terminal.

1 Section 29. Section 765.306, Florida Statutes, is
2 amended to read:

3 765.306 Determination of patient condition.--In
4 determining whether the patient has a terminal condition, has
5 an end-stage condition, or is in a persistent vegetative state
6 or may recover mental and physical capacity, or whether a
7 medical condition or limitation referred to in an advance
8 directive exists, the patient's attending or treating
9 physician ~~and at least one other consulting physician~~ must
10 ~~separately~~ examine the patient. The findings of each such
11 examination must be documented in the patient's medical record
12 and signed by each examining physician before life-prolonging
13 procedures may be withheld or withdrawn.

14 Section 30. Section 765.308, Florida Statutes, is
15 renumbered as section 765.1105, Florida Statutes, and amended
16 to read:

17 765.1105 ~~765.308~~ Transfer of a patient.--

18 (1) A health care provider or facility that refuses to
19 comply with a patient's advance directive ~~the declaration of a~~
20 ~~patient~~, or the treatment decision of his or her surrogate,
21 shall make reasonable efforts to transfer the patient to
22 another health care provider or facility that will comply with
23 the directive ~~declaration~~ or treatment decision. This chapter
24 does not require a health care provider or facility to commit
25 any act which is contrary to the provider's or facility's
26 moral or ethical beliefs ~~concerning life-prolonging~~
27 ~~procedures~~, if the patient:

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

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

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

5 (a) Transfer the patient to another health care
6 provider or facility. The health care provider or facility
7 shall pay the costs for transporting the patient to another
8 health care provider or facility; or

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

12 Section 31. Section 765.310, Florida Statutes, is
13 renumbered as section 765.1115, Florida Statutes, and amended
14 to read:

15 765.1115 ~~765.310~~ Falsification, forgery, or willful
16 concealment, cancellation, or destruction of directive
17 ~~declaration~~ or revocation or amendment; penalties.--

18 (1) Any person who willfully conceals, cancels,
19 defaces, obliterates, or damages an advance directive ~~a living~~
20 ~~will~~ without the principal's consent or who falsifies or
21 forges the revocation or amendment of an advance directive ~~a~~
22 ~~revocation of a living will~~ of another, and who thereby causes
23 life-prolonging procedures to be utilized in contravention of
24 the previously expressed intent of the principal, commits a
25 felony of the third degree, punishable as provided in s.
26 775.082, s. 775.083, or s. 775.084.

27 (2) Any person who falsifies or forges the advance
28 directive ~~living will~~ of another or who willfully conceals or
29 withholds personal knowledge of the revocation of an advance
30 directive ~~a declaration~~, with the intent to cause a
31 withholding or withdrawal of life-prolonging procedures

1 contrary to the wishes of the principal, and who thereby
2 because of such act directly causes life-prolonging procedures
3 to be withheld or withdrawn and death to be hastened, commits
4 a felony of the second degree, punishable as provided in s.
5 775.082, s. 775.083, or s. 775.084.

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

8 765.401 The proxy.--

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

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

15 (b) If there is no written declaration, the patient
16 must have a terminal condition, have an end-stage condition,
17 or be in a persistent vegetative state, and the proxy's
18 decision must be supported by clear and convincing evidence
19 that the decision would have been the one the patient would
20 have chosen had the patient been competent.

21 Section 33. Section 765.404, Florida Statutes, is
22 created to read:

23 765.404 Persistent vegetative state.--For persons in a
24 persistent vegetative state, as determined by the attending
25 physician in accordance with currently accepted medical
26 standards, who have no advance directive and for whom there is
27 no evidence indicating what the person would have wanted under
28 such conditions, and for whom, after a reasonably diligent
29 inquiry, no family or friends are available or willing to
30 serve as a proxy to make health care decisions for them,

31

1 life-prolonging procedures may be withheld or withdrawn under
2 the following conditions:

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

6 (2) The guardian and the person's attending physician,
7 in consultation with the medical ethics committee of the
8 facility where the patient is located, conclude that the
9 condition is permanent and that there is no reasonable medical
10 probability for recovery. If there is no medical ethics
11 committee at the facility, the facility must have an
12 arrangement with the medical ethics committee of another
13 facility or with a community-based ethics committee approved
14 by the Florida Bio-ethics Network. The ethics committee shall
15 review the case with the guardian, in consultation with the
16 person's attending physician, to determine whether the
17 condition is permanent and there is no reasonable medical
18 probability for recovery. The individual committee members and
19 the facility associated with an ethics committee shall not be
20 held liable in any civil action related to the performance of
21 any duties required in this subsection.

22 Section 34. The Department of Elderly Affairs shall
23 convene a workgroup composed of health care professionals,
24 health facilities, attorneys, consumers, clergy, academic
25 institutions, and other interested parties to develop model
26 advance directive forms. The department shall make the forms
27 available to the public. The department may reconvene the
28 workgroup as necessary to modify and update such forms.

29 Section 35. Effective July 1, 1999:

30 (1) Subsection (6) of section 3 of chapter 98-327,
31 Laws of Florida, is repealed and the Panel for the Study of

1 End-of-Life Care created by that section is continued until
2 January 31, 2000.

3 (2) To support the work of the panel, the sum of
4 \$100,000 is appropriated from the General Revenue Fund to the
5 Pepper Institute on Aging and Public Policy at Florida State
6 University.

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

9 Section 36. Except as otherwise expressly provided in
10 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 CS/SB 2228
4 Makes technical changes to correct a drafting error and
5 statutory cross references.
6 Creates definition for "end-stage condition."
7 Re-inserts and revises the definition for "terminal condition"
8 to exclude a reference to "persistent vegetative state" which
9 now has a stand-alone definition.
10 Inserts the effective date of the Act, October 1, 1999, as the
11 date from which previously executed directives will be given
12 effect.
13 Makes conforming changes in the bill to reflect the three
14 different conditions (i.e., terminal condition, end-stage
15 condition, or persistent vegetative state) in which a person
16 may provide, withhold or withdraw life-prolonging procedures
17 in a living will or through a health-care surrogate in the
18 event the person becomes mentally and physically
19 incapacitated.
20 Replaces "reasonable probability" and "reasonable hope" with
21 "reasonable medical probability" as related to recovery from a
22 condition or state.
23 Provides that only one physician is needed to determine a
24 terminal or end-stage condition, or persistent vegetative
25 state.
26 Clarifies that in those cases where there is no advance
27 directive, health care proxy or other indication,
28 life-prolonging procedures may be withheld or withdrawn if the
29 court-appointed guardian and the attending physician, in
30 consultation with a facility medical ethics committee,
31 conclude that the patient is in a permanent vegetative state
 with no reasonable medical probability of recovery.