

1
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 providing effective dates.

19

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

21

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

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

30 (b) The Legislature finds that the Panel for the Study
31 of End-of-Life Care has recommended policies that will assure

1 the citizens of this state the highest quality of
2 compassionate, competent, and adequate end-of-life care.

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

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

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

29 (f) The Legislature finds that the State Supreme Court
30 has declared that, based on the constitutional right to
31 privacy, competent adults can express their wishes to receive,

1 refuse, withhold, or withdraw any medical treatment and that
2 right continues even when a person becomes incapacitated.

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

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

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

28 395.1041 Access to emergency services and care.--

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

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1 (1) Hospital emergency services personnel may withhold
2 or withdraw cardiopulmonary resuscitation if presented with an
3 order not to resuscitate executed pursuant to s. 401.45.
4 Facility staff and facilities shall not be subject to criminal
5 prosecution or civil liability, nor be considered to have
6 engaged in negligent or unprofessional conduct, for
7 withholding or withdrawing cardiopulmonary resuscitation
8 pursuant to such an order.

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

11 400.142 Emergency medication kits; orders not to
12 resuscitate.--

13 (1) Other provisions of this chapter or of chapter
14 465, chapter 499, or chapter 893 to the contrary
15 notwithstanding, each nursing home operating pursuant to a
16 license issued by the agency may maintain an emergency
17 medication kit for the purpose of storing medicinal drugs to
18 be administered under emergency conditions to residents
19 residing in such facility.

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

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

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

26 (c) Establish requirements for the storing of
27 medicinal drugs in emergency medication kits and the
28 maintenance of records with respect thereto.

29 (d) Establish requirements for the administration of
30 medicinal drugs to residents under emergency conditions from
31 emergency medication kits.

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

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

12 400.4255 Use of ~~licensed~~ personnel; emergency care.--

13 (1)(a) Persons under contract to the facility,
14 facility staff, or volunteers, who are licensed according to
15 chapter 464, or those persons exempt under s. 464.022(1), and
16 others as defined by rule, may administer medications to
17 residents, take residents' vital signs, manage individual
18 weekly pill organizers for residents who self-administer
19 medication, give prepackaged enemas ordered by a physician,
20 observe residents, document observations on the appropriate
21 resident's record, report observations to the resident's
22 physician, and contract or allow residents or a resident's
23 representative, designee, surrogate, guardian, or attorney in
24 fact to contract with a third party, provided residents meet
25 the criteria for appropriate placement as defined in s.
26 400.426. Nursing assistants certified pursuant to s. 400.211
27 may take residents' vital signs as directed by a licensed
28 nurse or physician.

29 (b) All staff in facilities licensed under this part
30 shall exercise their professional responsibility to observe
31 residents, to document observations on the appropriate

1 resident's record, and to report the observations to the
2 resident's physician. However, the owner or administrator of
3 the facility shall be responsible for determining that the
4 resident receiving services is appropriate for residence in
5 the facility.

6 (c) In an emergency situation, licensed personnel may
7 carry out their professional duties pursuant to chapter 464
8 until emergency medical personnel assume responsibility for
9 care.

10 (2) In facilities licensed to provide extended
11 congregate care, persons under contract to the facility,
12 facility staff, or volunteers, who are licensed according to
13 chapter 464, or those persons exempt under s. 464.022(1), or
14 those persons certified as nursing assistants pursuant to s.
15 400.211, may also perform all duties within the scope of their
16 license or certification, as approved by the facility
17 administrator and pursuant to this part.

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

27 Section 5. Section 400.487, Florida Statutes, is
28 amended to read:

29 400.487 Patient assessment; establishment and review
30 of plan of care; provision of services; orders not to
31 resuscitate.--

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

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

14 (3) Each patient has the right to be informed of and
15 to participate in the planning of his or her care. Each
16 patient must be provided, upon request, a copy of the plan of
17 care established and maintained for that patient by the home
18 health agency.

19 (4) Home health services that are provided to a
20 patient must be evaluated in the patient's home by a physician
21 licensed under chapter 458, chapter 459, chapter 460, or
22 chapter 461 or by a registered nurse licensed under chapter
23 464 as frequently as necessary to assure safe and adequate
24 care, but not less frequently than once every 62 days.

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

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

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

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

17 400.6095 Patient admission; assessment; plan of care;
18 discharge; death.--

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

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

1 400.621 Rules and standards relating to adult
2 family-care homes.--

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

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

15 401.45 Denial of emergency treatment; civil
16 liability.--

17 (3)(a) ~~Resuscitation or life-prolonging techniques~~ may
18 be withheld or withdrawn from a patient by an emergency
19 medical technician or paramedic if evidence of an order not to
20 resuscitate by the patient's physician is presented to the
21 emergency medical technician or paramedic ~~in a manner provided~~
22 ~~by rule of the department.~~

23 (b) Any licensee, physician, medical director, or
24 emergency medical technician or paramedic who acts under the
25 direction of a medical director is not subject to criminal
26 prosecution or civil liability, and has not engaged in
27 negligent or unprofessional conduct, as a result of the
28 withholding or withdrawal of resuscitation ~~or life-prolonging~~
29 ~~techniques~~ from a patient pursuant to this subsection and
30 rules adopted by the department.

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

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

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

15 455.604 Requirement for instruction for certain
16 licensees on human immunodeficiency virus and acquired immune
17 deficiency syndrome.--

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

23 Section 10. Subsection (4) is added to section
24 458.319, Florida Statutes, 1998 Supplement, to read:

25 458.319 Renewal of license.--

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

1 Section 11. Subsection (5) is added to section
2 459.008, Florida Statutes, 1998 Supplement, to read:

3 459.008 Renewal of licenses and certificates.--

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

10 Section 12. Section 732.912, Florida Statutes, 1998
11 Supplement, is amended to read:

12 732.912 Persons who may make an anatomical gift.--

13 (1) Any person who may make a will may give all or
14 part of his or her body for any purpose specified in s.
15 732.910, the gift to take effect upon death. An anatomical
16 gift made by an adult donor and not revoked by the donor as
17 provided in s. 732.916 is irrevocable and does not require the
18 consent or concurrence of any person after the donor's death.

19 (2) If the decedent has ~~not~~ executed an agreement
20 concerning an anatomical gift, including signing an organ and
21 tissue donor card, expressing his or her wish to donate in a
22 living will or advance directive, or signifying his or her
23 intent to donate on his or her driver's license or in some
24 other written form has indicated his or her wish to make an
25 anatomical gift,~~a member of one of the classes of persons~~
26 ~~listed below, in the order of priority stated and in the~~
27 ~~absence of actual notice of contrary indications by the~~
28 ~~decedent or actual notice of opposition by a member of the~~
29 ~~same or a prior class,~~ the surrogate designated by the
30 decedent pursuant to part II of chapter 765 may give all or
31

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

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

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

1 aware of the proposed gift, and further provided that a
2 reasonable search is made to show that there would have been
3 no objection on religious grounds by the decedent.

4 (4)~~(3)~~ If the donee has actual notice of contrary
5 indications by the decedent or, in the case of a spouse making
6 the gift, an objection of an adult son or daughter or actual
7 notice that a gift by a member of a class is opposed by a
8 member of the same or a prior class, the donee shall not
9 accept the gift.

10 (5)~~(4)~~ The person authorized by subsection(3)~~(2)~~ may
11 make the gift after the decedent's death or immediately before
12 the decedent's death.

13 (6)~~(5)~~ A gift of all or part of a body authorizes any
14 examination necessary to assure medical acceptability of the
15 gift for the purposes intended.

16 (7)~~(6)~~ Once the gift has been made, the rights of the
17 donee are paramount to the rights of others, except as
18 provided by s. 732.917.

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

21 732.914 Manner of executing anatomical gifts.--

22 (5) Any gift by a member of a class designated in s.
23 732.912(3)~~(2)~~ must be made by a document signed by that person
24 or made by that person's witnessed telephonic discussion,
25 telegraphic message, or other recorded message.

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

28 732.917 Rights and duties at death.--

29 (3) The organ procurement organization, tissue bank,
30 or eye bank, or hospital medical professionals under the
31 direction thereof, may perform any and all tests to evaluate

1 the deceased as a potential donor and any invasive procedures
2 on the deceased body in order to preserve the potential
3 donor's organs. These procedures do not include the surgical
4 removal of an organ or penetrating any body cavity,
5 specifically for the purpose of donation, until a properly
6 executed donor card or document is located or, if a properly
7 executed donor card or document cannot be located, a person
8 specified in s. 732.912(3)~~(2)~~ has been located, has been
9 notified of the death, and has granted legal permission for
10 the donation.

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

13 732.922 Duty of certain hospital administrators;
14 liability of hospital administrators, organ procurement
15 organizations, eye banks, and tissue banks.--

16 (2) Where, based on accepted medical standards, a
17 hospital patient is a suitable candidate for organ or tissue
18 donation, the hospital administrator or the hospital
19 administrator's designee shall, at or near the time of death,
20 access the organ and tissue donor registry created by s.
21 732.915(4) to ascertain the existence of a donor card or
22 document executed by the decedent. In the absence of a donor
23 card, organ donation sticker or organ donation imprint on a
24 driver's license, or other properly executed document, the
25 hospital administrator or designee shall request:

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

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

1
2 to consent to the gift of all or any part of the decedent's
3 body for any purpose specified in this part. Except as
4 provided in s. 732.912, in the absence of actual notice of
5 opposition, consent need only be obtained from the person or
6 persons in the highest priority class reasonably available.

7 Section 16. Section 765.101, Florida Statutes, is
8 amended to read:

9 765.101 Definitions.--As used in this chapter:

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

18 (2) "Attending physician" means the primary physician
19 who has responsibility for the treatment and care of the
20 patient.

21 (3) "Close personal friend" means any person 18 years
22 of age or older who has exhibited special care and concern for
23 the patient, and who presents an affidavit to the health care
24 facility or to the attending or treating physician stating
25 that he or she is a friend of the patient; is willing and able
26 to become involved in the patient's health care; and has
27 maintained such regular contact with the patient so as to be
28 familiar with the patient's activities, health, and religious
29 or moral beliefs.

30 (4) "End-stage condition" means a condition that is
31 caused by injury, disease, or illness which has resulted in

1 severe and permanent deterioration, indicated by incapacity
2 and complete physical dependency, and for which, to a
3 reasonable degree of medical certainty, treatment of the
4 irreversible condition would be medically ineffective.

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

6 (a) Informed consent, refusal of consent, or
7 withdrawal of consent to any and all health care, including
8 life-prolonging procedures.

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

12 (c) The right of access to all records of the
13 principal reasonably necessary for a health care surrogate to
14 make decisions involving health care and to apply for
15 benefits.

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

18 (6)~~(5)~~ "Health care facility" means a hospital,
19 nursing home, hospice, home health agency, or health
20 maintenance organization licensed in this state, or any
21 facility subject to part I of chapter 394.

22 (7)~~(6)~~ "Health care provider" or "provider" means any
23 person licensed, certified, or otherwise authorized by law to
24 administer health care in the ordinary course of business or
25 practice of a profession.

26 (8)~~(7)~~ "Incapacity" or "incompetent" means the patient
27 is physically or mentally unable to communicate a willful and
28 knowing health care decision. For the purposes of making an
29 anatomical gift, the term also includes a patient who is
30 deceased.

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

9 (10)~~(9)~~ "Life-prolonging procedure" means any medical
10 procedure, treatment, or intervention, including artificially
11 provided sustenance and hydration, which sustains, restores,
12 or supplants a spontaneous vital function, which:

13 ~~(a) Utilizes mechanical or other artificial means to~~
14 ~~sustain, restore, or supplant a spontaneous vital function;~~
15 ~~and~~

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

18
19 The term "~~life-prolonging procedure~~" does not include the
20 administration of medication or performance of medical
21 procedure, when such medication or procedure is deemed
22 necessary to provide comfort care or to alleviate pain.

23 (11)~~(10)~~ "Living will" or "declaration" means:

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

26 (b) A witnessed oral statement made by the principal
27 expressing the principal's instructions concerning
28 life-prolonging procedures.

29 (12) "Persistent vegetative state" means a permanent
30 and irreversible condition of unconsciousness in which there
31 is:

1 (a) The absence of voluntary action or cognitive
2 behavior of any kind.

3 (b) An inability to communicate or interact
4 purposefully with the environment.

5 (13)~~(11)~~ "Physician" means a person licensed pursuant
6 to chapter 458 or chapter 459.

7 (14)~~(12)~~ "Principal" means a competent adult executing
8 an advance directive and on whose behalf health care decisions
9 are to be made.

10 (15)~~(13)~~ "Proxy" means a competent adult who has not
11 been expressly designated to make health care decisions for a
12 particular incapacitated individual, but who, nevertheless, is
13 authorized pursuant to s. 765.401 to make health care
14 decisions for such individual.

15 (16)~~(14)~~ "Surrogate" means any competent adult
16 expressly designated by a principal to make health care
17 decisions on behalf of the principal upon the principal's
18 incapacity.

19 (17)~~(15)~~ "Terminal condition" means⁺
20 ~~(a)~~ a condition caused by injury, disease, or illness
21 from which there is no reasonable medical probability of
22 recovery and which, without treatment, can be expected to
23 cause death. ~~or~~

24 ~~(b) A persistent vegetative state characterized by a~~
25 ~~permanent and irreversible condition of unconsciousness in~~
26 ~~which there is:~~

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

29 ~~2. An inability to communicate or interact~~
30 ~~purposefully with the environment.~~

31

ENROLLED

1999 Legislature

CS for CS for SB 2228, 1st Engrossed

1 ~~(16) "Treating physician" means the physician who has~~
2 ~~treated or is treating the patient for any condition directly~~
3 ~~related to the condition resulting in the patient's~~
4 ~~incapacity.~~

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

7 765.102 Legislative findings and intent.--

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

27 Section 18. Section 765.103, Florida Statutes, is
28 amended to read:

29 765.103 Existing advance directives.--Any advance
30 directive made prior to October 1, 1999, ~~April 10, 1992,~~ shall
31

1 be given effect as executed, ~~as provided in this chapter~~
2 provided such directive was legally effective when written.

3 Section 19. Section 765.104, Florida Statutes, is
4 amended to read:

5 765.104 Amendment or revocation.--

6 (1) An advance directive or designation of a surrogate
7 may be amended or revoked at any time by a competent
8 principal:

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

10 (b) By means of the physical cancellation or
11 destruction of the advance directive by the principal or by
12 another in the principal's presence and at the principal's
13 direction;

14 (c) By means of an oral expression of intent to amend
15 or revoke; or

16 (d) By means of a subsequently executed advance
17 directive that is materially different from a previously
18 executed advance directive.

19 (2) Unless otherwise provided in the advance directive
20 or in an order of dissolution or annulment of marriage, the
21 dissolution or annulment of marriage of the principal revokes
22 the designation of the principal's former spouse as a
23 surrogate.

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

30 Section 20. Section 765.107, Florida Statutes, is
31 amended to read:

1 765.107 Construction.--

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

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

11 Section 21. Section 765.110, Florida Statutes, is
12 amended to read:

13 765.110 Health care facilities and providers;
14 discipline.--

15 (1) A health care facility, pursuant to Pub. L. No.
16 101-508, ss. 4206 and 4751, shall provide to each patient
17 written information concerning the individual's rights
18 concerning advance directives and the health care facility's
19 policies respecting the implementation of such rights, and
20 shall document in the patient's medical records whether or not
21 the individual has executed an advance directive.

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

28 (3)~~(2)~~ A health care provider or health care facility
29 shall be subject to professional discipline and revocation of
30 license or certification, and a fine of not more than \$1,000
31 ~~\$500~~ per incident, or both, if the health care provider or

1 health care facility, as a condition of treatment or
2 admission, requires an individual to execute or waive an
3 advance directive.

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

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

15 765.204 Capacity of principal; procedure.--

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

31

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

3 765.205 Responsibility of the surrogate.--

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

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

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

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

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

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

31

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

6
 7 Name:.....
 8 Address:.....
 9 Zip Code:..
 10 Phone:.....

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

14 Additional Instructions (optional):
 15
 16
 17

18 (Signed)....
 19 Witness....
 20 Address....
 21 Phone....
 22 Witness....
 23 Address....
 24 Phone....

25
 26 Section 27. Subsection (2) of section 765.304, Florida
 27 Statutes, is amended to read:

28 765.304 Procedure for living will.--

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

31

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

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

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

10 Section 28. Section 765.305, Florida Statutes, is
11 amended to read:

12 765.305 Procedure in absence of a living will.--

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

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

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

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

30 Section 29. Section 765.306, Florida Statutes, is
31 amended to read:

1 765.306 Determination of patient condition.--In
2 determining whether the patient has a terminal condition, has
3 an end-stage condition, or is in a persistent vegetative state
4 or may recover mental and physical capacity, or whether a
5 medical condition or limitation referred to in an advance
6 directive exists, the patient's attending or treating
7 physician and at least one other consulting physician must
8 separately examine the patient. The findings of each such
9 examination must be documented in the patient's medical record
10 and signed by each examining physician before life-prolonging
11 procedures may be withheld or withdrawn.

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

15 765.1105 ~~765.308~~ Transfer of a patient.--

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

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

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

30 (2) A health care provider or facility that is
31 unwilling to carry out the wishes of the patient or the

1 treatment decision of his or her surrogate because of moral or
2 ethical beliefs must within 7 days either:

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

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

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

13 765.1115 ~~765.310~~ Falsification, forgery, or willful
14 concealment, cancellation, or destruction of directive
15 ~~declaration~~ or revocation or amendment; penalties.--

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

25 (2) Any person who falsifies or forges the advance
26 directive ~~living will~~ of another or who willfully conceals or
27 withholds personal knowledge of the revocation of an advance
28 directive ~~a declaration~~, with the intent to cause a
29 withholding or withdrawal of life-prolonging procedures
30 contrary to the wishes of the principal, and who thereby
31 because of such act directly causes life-prolonging procedures

1 to be withheld or withdrawn and death to be hastened, commits
2 a felony of the second degree, punishable as provided in s.
3 775.082, s. 775.083, or s. 775.084.

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

6 765.401 The proxy.--

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

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

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

19 Section 33. Section 765.404, Florida Statutes, is
20 created to read:

21 765.404 Persistent vegetative state.--For persons in a
22 persistent vegetative state, as determined by the attending
23 physician in accordance with currently accepted medical
24 standards, who have no advance directive and for whom there is
25 no evidence indicating what the person would have wanted under
26 such conditions, and for whom, after a reasonably diligent
27 inquiry, no family or friends are available or willing to
28 serve as a proxy to make health care decisions for them,
29 life-prolonging procedures may be withheld or withdrawn under
30 the following conditions:

31

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

4 (2) The guardian and the person's attending physician,
5 in consultation with the medical ethics committee of the
6 facility where the patient is located, conclude that the
7 condition is permanent and that there is no reasonable medical
8 probability for recovery and that withholding or withdrawing
9 life prolonging procedures is in the best interest of the
10 patient. If there is no medical ethics committee at the
11 facility, the facility must have an arrangement with the
12 medical ethics committee of another facility or with a
13 community-based ethics committee approved by the Florida
14 Bio-ethics Network. The ethics committee shall review the case
15 with the guardian, in consultation with the person's attending
16 physician, to determine whether the condition is permanent and
17 there is no reasonable medical probability for recovery. The
18 individual committee members and the facility associated with
19 an ethics committee shall not be held liable in any civil
20 action related to the performance of any duties required in
21 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. Except as otherwise expressly provided in
30 this act, this act shall take effect October 1, 1999.
31