

By Representative Heyman

1                                   A bill to be entitled  
2           An act relating to health care advance  
3           directives; amending s. 765.101, F.S.; defining  
4           the term "palliative care"; redefining the term  
5           "terminal condition" to provide that such a  
6           condition is not necessary for ensuring a right  
7           to refuse treatment; amending s. 765.102, F.S.;  
8           providing legislative intent; amending s.  
9           765.302, F.S.; revising a provision relating to  
10          the procedure for making a living will to  
11          remove reference to a terminal condition;  
12          amending s. 765.303, F.S.; revising the  
13          suggested form of a living will; amending s.  
14          765.304, F.S.; removing reference to a physical  
15          condition which is terminal with respect to the  
16          procedure for a living will; amending s.  
17          765.305, F.S.; removing reference to a terminal  
18          condition with respect to the procedure in the  
19          absence of a living will; amending s. 765.306,  
20          F.S.; removing reference to a terminal  
21          condition with respect to the determination of  
22          a patient's condition under the Life-Prolonging  
23          Procedure Act of Florida; providing an  
24          effective date.

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

27  
28           Section 1. Subsections (11), (12), (13), (14), (15),  
29   and (16) of section 765.101, Florida Statutes, are renumbered  
30   as subsections (12), (13), (14), (15), (16), and (17),  
31

1 respectively, a new subsection (11) is added to said section,  
2 and subsection (15) is amended, to read:

3 765.101 Definitions.--As used in this chapter:

4 (11) "Palliative care" means efforts to eliminate or  
5 reduce mental or physical pain, suffering, and discomfort.

6 ~~(16)~~~~(15)~~ "Terminal condition" means:

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

10 (b) A persistent vegetative state characterized by a  
11 permanent and irreversible condition of unconsciousness in  
12 which there is:

13 1. The absence of voluntary action or cognitive  
14 behavior of any kind; and

15 2. An inability to communicate or interact  
16 purposefully with the environment.

17

18 "Terminal condition" is not necessary for ensuring a right to  
19 refuse treatment.

20 Section 2. Section 765.102, Florida Statutes, is  
21 amended to read:

22 765.102 Legislative findings and intent.--

23 (1) The Legislature finds that every competent adult  
24 has the fundamental right of self-determination regarding  
25 decisions pertaining to his or her own health, including the  
26 right to choose or refuse medical treatment. This right is  
27 subject to certain interests of society, such as the  
28 protection of human life and the preservation of ethical  
29 standards in the medical profession. Furthermore, the  
30 fundamental right of self-determination, including the right  
31 to refuse treatment, provides for informed, competent, and

1 uncoerced adults to refuse any medical treatment, including  
2 life-sustaining treatment. Such a refusal may be set out in an  
3 advance directive.

4 (2) The Legislature intends that nothing in this  
5 chapter shall be construed to prevent or discourage the  
6 provision of medically and pharmacologically appropriate pain  
7 control or other forms of palliative care. In accordance with  
8 standard and accepted medical and ethical principles, the use  
9 of pharmacological substances with the intent of alleviating  
10 or eliminating pain and other discomfort is encouraged. Such  
11 use is not to be regarded as ethically or legally blameworthy,  
12 even if appropriate pain control occurs during, and so  
13 precedes the outcome of, the dying process.

14 (3)(2) To ensure that such right is not lost or  
15 diminished by virtue of later physical or mental incapacity,  
16 the Legislature intends that a procedure be established to  
17 allow a person to plan for incapacity by designating another  
18 person to direct the course of his or her medical treatment  
19 upon his or her incapacity. Such procedure should be less  
20 expensive and less restrictive than guardianship and permit a  
21 previously incapacitated person to exercise his or her full  
22 right to make health care decisions as soon as the capacity to  
23 make such decisions has been regained.

24 (4)(3) The Legislature further finds that the  
25 artificial prolongation of life for a person with a terminal  
26 condition may secure for him or her only a precarious and  
27 burdensome existence, while providing nothing medically  
28 necessary or beneficial to the patient. In order that the  
29 rights and intentions of a person with such a condition may be  
30 respected even after he or she is no longer able to  
31 participate actively in decisions concerning himself or

1 herself, and to encourage communication among such patient,  
2 his or her family, and his or her physician, the Legislature  
3 declares that the laws of this state recognize the right of a  
4 competent adult to make an advance directive instructing his  
5 or her physician to provide, withhold, or withdraw  
6 life-prolonging procedures, or to designate another to make  
7 the treatment decision for him or her in the event that such  
8 person should be found to be incompetent and suffering from a  
9 terminal condition.

10 (5) The Legislature further recognizes that many  
11 difficult ethical issues accompany actions and processes at  
12 the end of life, and that reasonable people may disagree on  
13 these issues. Therefore, the Legislature strongly urges  
14 institutions that train health professionals to establish or  
15 maintain educational programs to address ethical issues  
16 pertaining to end-of-life care. These issues should include,  
17 but not be limited to, withdrawing and withholding treatment,  
18 palliative care (including pain control), surrogate  
19 decisionmaking, valid refusal of treatment, and other issues  
20 as appropriate and as stated in current law.

21 Section 3. Subsection (1) of section 765.302, Florida  
22 Statutes, is amended to read:

23 765.302 Procedure for making a living will; notice to  
24 physician.--

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

1 principal. If the principal is physically unable to sign the  
2 living will, one of the witnesses must subscribe the  
3 principal's signature in the principal's presence and at the  
4 principal's direction.

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

7 765.303 Suggested form of a living will.--

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

10 Living Will

11 Declaration made this .... day of ....., ~~19~~ .... I,  
12 ....., willfully and voluntarily make known my desire that  
13 my dying not be artificially prolonged under the circumstances  
14 set forth below, and I do hereby declare:

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

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

30 In the event that I have been determined to be unable  
31 to provide express and informed consent regarding the

1 withholding, withdrawal, or continuation of life-prolonging  
2 procedures, I wish to designate, as my surrogate to carry out  
3 the provisions of this declaration:

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

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

12 Additional Instructions (optional):  
13 .....  
14 .....  
15 .....

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

23  
24 Section 5. Subsection (2) of section 765.304, Florida  
25 Statutes, is amended to read:

26 765.304 Procedure for living will.--

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

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

1       ~~(b) The principal's physical condition is terminal.~~  
2       (b)(c) Any limitations or conditions expressed orally  
3 or in a written declaration have been carefully considered and  
4 satisfied.

5           Section 6. Subsection (2) of section 765.305, Florida  
6 Statutes, is amended to read:

7           765.305 Procedure in absence of a living will.--

8           (2) Before exercising the incompetent patient's right  
9 to forego treatment, the surrogate must be satisfied that:  
10          ~~(a)~~ the patient does not have a reasonable probability  
11 of recovering competency so that the right could be exercised  
12 by the patient.

13       ~~(b) The patient's physical condition is terminal.~~

14           Section 7. Section 765.306, Florida Statutes, is  
15 amended to read:

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

26           Section 8. This act shall take effect October 1, 1999.

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HOUSE SUMMARY

Revises provisions with respect to health care advance directives to provide that a terminal condition is not necessary for ensuring a right to refuse treatment. Provides Legislative intent with respect to health care advance directives.

Revises the Life-Prolonging Procedure Act of Florida to remove reference to terminal condition.

See bill for details.