

By Senator Klein

28-846B-00

1 A bill to be entitled
2 An act relating to end-of-life care; amending
3 s. 381.026, F.S., relating to the Florida
4 Patient's Bill of Rights and Responsibilities;
5 revising the term "health care facility";
6 modifying liability restrictions; including
7 pain management and palliative care within
8 these medical services for which a patient has
9 a right to request, inquire about, or refuse as
10 treatment; creating the right to medical
11 treatment for pain management; expanding
12 applicability of responsibility for
13 distributing the statement of rights and
14 responsibilities to patients; revising the
15 statement of patient rights and
16 responsibilities to include reference to pain
17 management and palliative care; amending s.
18 395.1041, F.S.; specifying conditions under
19 which hospital personnel may withhold
20 resuscitation; amending s. 401.45, F.S.;
21 relating to emergency treatment, requiring use
22 of official form for valid do-not-resuscitate
23 order; specifying required signatures;
24 specifying authorized substitute signatures;
25 amending s. 445.597, F.S., relating to
26 licensure renewal requirements for certain
27 health care professionals; providing for
28 substitution of continuing education programs
29 or courses on end-of-life care and palliative
30 health care for any authorized domestic
31 violence continuing education program or course

1 taken within a specified period; amending s.
2 765.102, F.S., relating to legislative findings
3 and intent; adding legislative intent to allow
4 a person to plan for future incapacity by
5 executing a document; encouraging health care
6 professionals to rapidly increase their
7 understanding of end-of-life and palliative
8 health care; requiring a statewide, culturally
9 sensitive educational campaign on end-of-life
10 care for the general public; amending s.
11 765.203, F.S.; revising the suggested form for
12 designating a health care surrogate to include
13 reference to anatomical-gift declarations;
14 amending s. 765.204, F.S.; providing a
15 procedure for determining a principal's
16 capacity; revising provisions; providing
17 cross-references; amending s. 765.205, F.S.;
18 providing responsibilities of a health care
19 surrogate with respect to medical records of
20 the principal; amending s. 765.303, F.S.;
21 revising the suggested form for a living will;
22 changing the prerequisite circumstances that
23 activate the terms of a living will; amending
24 s. 765.305, F.S.; providing a procedure for
25 withholding or withdrawing medical treatment in
26 the absence of a living will; changing the
27 prerequisite circumstances on which a health
28 care surrogate must rely before authorizing
29 withholding or withdrawing of medical treatment
30 for another person; amending s. 765.306, F.S.,
31 relating to determination of patient condition;

1 changing the factors that must be evaluated for
2 determining whether a living will may take
3 effect; deleting the requirement for a
4 consulting physician to separately examine the
5 patient; amending s. 765.401, F.S.; providing a
6 proxy to make health care decisions on behalf
7 of a patient; deleting the alternative
8 requirements that a proxy act in accordance
9 with a written declaration or that the patient
10 has certain specified medical conditions before
11 a proxy may consent to withholding or
12 withdrawing life-prolonging procedures;
13 creating the End-of-Life Care Workgroup;
14 providing membership of the workgroup;
15 requiring a report; providing an effective
16 date.

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

19

20 Section 1. Section 381.026, Florida Statutes, is
21 amended to read:

22 381.026 Florida Patient's Bill of Rights and
23 Responsibilities.--

24 (1) SHORT TITLE.--This section may be cited as the
25 "Florida Patient's Bill of Rights and Responsibilities."

26 (2) DEFINITIONS.--As used in this section and s.
27 381.0261, the term:

28 (a) "Department" means the Department of Health.

29 (b) "Health care facility" means a facility licensed
30 under chapter 395 or part II or part VI of chapter 400.

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1 (c) "Health care provider" means a physician licensed
2 under chapter 458, an osteopathic physician licensed under
3 chapter 459, or a podiatric physician licensed under chapter
4 461.

5 (d) "Responsible provider" means a health care
6 provider who is primarily responsible for patient care in a
7 health care facility or provider's office.

8 (3) PURPOSE.--It is the purpose of this section to
9 promote the interests and well-being of the patients of health
10 care providers and health care facilities and to promote
11 better communication between the patient and the health care
12 provider. It is the intent of the Legislature that health care
13 providers understand their responsibility to give their
14 patients a general understanding of the procedures to be
15 performed on them and to provide information pertaining to
16 their health care so that they may make decisions in an
17 informed manner after considering the information relating to
18 their condition, the available treatment alternatives, and
19 substantial risks and hazards inherent in the treatments. It
20 is the intent of the Legislature that patients have a general
21 understanding of their responsibilities toward health care
22 providers and health care facilities. It is the intent of the
23 Legislature that the provision of such information to a
24 patient eliminate potential misunderstandings between patients
25 and health care providers. It is a public policy of the state
26 that the interests of patients be recognized in a patient's
27 bill of rights and responsibilities and that a health care
28 facility or health care provider may not require a patient to
29 waive his or her rights as a condition of treatment. This
30 section shall not be used for any purpose in any civil ~~or~~
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1 ~~administrative~~ action and neither expands nor limits any
2 rights or remedies provided under any other law.

3 (4) RIGHTS OF PATIENTS.--Each health care facility or
4 provider shall observe the following standards:

5 (a) Individual dignity.--

6 1. The individual dignity of a patient must be
7 respected at all times and upon all occasions.

8 2. Every patient who is provided health care services
9 retains certain rights to privacy, which must be respected
10 without regard to the patient's economic status or source of
11 payment for his or her care. The patient's rights to privacy
12 must be respected to the extent consistent with providing
13 adequate medical care to the patient and with the efficient
14 administration of the health care facility or provider's
15 office. However, this subparagraph does not preclude
16 necessary and discreet discussion of a patient's case or
17 examination by appropriate medical personnel.

18 3. A patient has the right to a prompt and reasonable
19 response to a question or request. A health care facility
20 shall respond in a reasonable manner to the request of a
21 patient's health care provider for medical services, including
22 pain management or palliative care, to the patient. The
23 health care facility shall also respond in a reasonable manner
24 to the patient's request for other services customarily
25 rendered by the health care facility to the extent such
26 services do not require the approval of the patient's health
27 care provider or are not inconsistent with the patient's
28 treatment.

29 4. A patient in a health care facility has the right
30 to retain and use personal clothing or possessions as space
31 permits, unless for him or her to do so would infringe upon

1 the right of another patient or is medically or
2 programmatically contraindicated for documented medical,
3 safety, or programmatic reasons.

4 (b) Information.--

5 1. A patient has the right to know the name, function,
6 and qualifications of each health care provider who is
7 providing medical services to the patient. A patient may
8 request such information from his or her responsible provider
9 or the health care facility in which he or she is receiving
10 medical services.

11 2. A patient in a health care facility has the right
12 to know what patient support services are available in the
13 facility.

14 3. A patient has the right to be given by his or her
15 health care provider information concerning diagnosis;
16 planned course of treatment, including pain management and
17 palliative care;alternatives;~~risks;~~and prognosis, unless
18 it is medically inadvisable or impossible to give this
19 information to the patient, in which case the information must
20 be given to the patient's guardian or a person designated as
21 the patient's representative. A patient has the right to
22 refuse this information.

23 4. A patient has the right to refuse any treatment,
24 including pain management or palliative care,based on
25 information required by this paragraph, except as otherwise
26 provided by law. The responsible provider shall document any
27 such refusal.

28 5. A patient in a health care facility has the right
29 to know what facility rules and regulations apply to patient
30 conduct.

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1 6. A patient has the right to express grievances to a
2 health care provider, a health care facility, or the
3 appropriate state licensing agency regarding alleged
4 violations of patients' rights. A patient has the right to
5 know the health care provider's or health care facility's
6 procedures for expressing a grievance.

7 7. A patient in a health care facility who does not
8 speak English has the right to be provided an interpreter when
9 receiving medical services if the facility has a person
10 readily available who can interpret on behalf of the patient.

11 (c) Financial information and disclosure.--

12 1. A patient has the right to be given, upon request,
13 by the responsible provider, his or her designee, or a
14 representative of the health care facility full information
15 and necessary counseling on the availability of known
16 financial resources for the patient's health care.

17 2. A health care provider or a health care facility
18 shall, upon request, disclose to each patient who is eligible
19 for Medicare, in advance of treatment, whether the health care
20 provider or the health care facility in which the patient is
21 receiving medical services accepts assignment under Medicare
22 reimbursement as payment in full for medical services and
23 treatment rendered in the health care provider's office or
24 health care facility.

25 3. A health care provider or a health care facility
26 shall, upon request, furnish a patient, prior to provision of
27 medical services, a reasonable estimate of charges for such
28 services. Such reasonable estimate shall not preclude the
29 health care provider or health care facility from exceeding
30 the estimate or making additional charges based on changes in
31 the patient's condition or treatment needs.

1 4. A patient has the right to receive a copy of an
2 itemized bill upon request. A patient has a right to be given
3 an explanation of charges upon request.

4 (d) Access to health care.--

5 1. A patient has the right to impartial access to
6 medical treatment or accommodations, regardless of race,
7 national origin, religion, physical handicap, or source of
8 payment.

9 2. A patient has the right to treatment for any
10 emergency medical condition that will deteriorate from failure
11 to provide such treatment.

12 3. A patient has the right to medical treatment for
13 pain management.

14 (e) Experimental research.--In addition to the
15 provisions of s. 766.103, a patient has the right to know if
16 medical treatment is for purposes of experimental research and
17 to consent prior to participation in such experimental
18 research. For any patient, regardless of ability to pay or
19 source of payment for his or her care, participation must be a
20 voluntary matter; and a patient has the right to refuse to
21 participate. The patient's consent or refusal must be
22 documented in the patient's care record.

23 (f) Patient's knowledge of rights and
24 responsibilities.--In receiving health care, patients have the
25 right to know what their rights and responsibilities are.

26 (5) RESPONSIBILITIES OF PATIENTS.--Each patient of a
27 health care provider or health care facility shall respect the
28 health care provider's and health care facility's right to
29 expect behavior on the part of patients which, considering the
30 nature of their illness, is reasonable and responsible. Each

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1 patient shall observe the responsibilities described in the
2 following summary.

3 (6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.--Any
4 health care provider who treats a patient in an office, or any
5 health care facility licensed under chapter 395 which ~~that~~
6 provides emergency services and care or outpatient services
7 and care to a patient, any health care provider who ~~or~~ admits
8 and treats a patient, or a facility or setting regulated under
9 part II or part VI of chapter 400 shall adopt and make
10 available to the patient, in writing, a statement of the
11 rights and responsibilities of patients, including:

12
13 SUMMARY OF THE FLORIDA PATIENT'S BILL
14 OF RIGHTS AND RESPONSIBILITIES
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16 Florida law requires that your health care provider or
17 health care facility recognize your rights while you are
18 receiving medical care and that you respect the health care
19 provider's or health care facility's right to expect certain
20 behavior on the part of patients. You may request a copy of
21 the full text of this law from your health care provider or
22 health care facility. A summary of your rights and
23 responsibilities follows:

24 A patient has the right to be treated with courtesy and
25 respect, with appreciation of his or her individual dignity,
26 and with protection of his or her need for privacy.

27 A patient has the right to a prompt and reasonable
28 response to questions and requests.

29 A patient has the right to know who is providing
30 medical services and who is responsible for his or her care.

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1 A patient has the right to know what patient support
2 services are available, including whether an interpreter is
3 available if he or she does not speak English.

4 A patient has the right to know what rules and
5 regulations apply to his or her conduct.

6 A patient has the right to be given by the health care
7 provider information concerning diagnosis; planned course of
8 treatment, including pain management and palliative care;
9 alternatives; risks; and prognosis.

10 A patient has the right to refuse any treatment,
11 including pain management or palliative care, except as
12 otherwise provided by law.

13 A patient has the right to be given, upon request, full
14 information and necessary counseling on the availability of
15 known financial resources for his or her care.

16 A patient who is eligible for Medicare has the right to
17 know, upon request and in advance of treatment, whether the
18 health care provider or health care facility accepts the
19 Medicare assignment rate.

20 A patient has the right to receive, upon request, prior
21 to treatment, a reasonable estimate of charges for medical
22 care.

23 A patient has the right to receive a copy of a
24 reasonably clear and understandable, itemized bill and, upon
25 request, to have the charges explained.

26 A patient has the right to impartial access to medical
27 treatment or accommodations, regardless of race, national
28 origin, religion, physical handicap, or source of payment.

29 A patient has the right to treatment for any emergency
30 medical condition that will deteriorate from failure to
31 provide treatment.

1 A patient has the right to know if medical treatment is
2 for purposes of experimental research and to give his or her
3 consent or refusal to participate in such experimental
4 research.

5 A patient has the right to express grievances regarding
6 any violation of his or her rights, as stated in Florida law,
7 through the grievance procedure of the health care provider or
8 health care facility which served him or her and to the
9 appropriate state licensing agency.

10 A patient is responsible for providing to the health
11 care provider, to the best of his or her knowledge, accurate
12 and complete information about present complaints, past
13 illnesses, hospitalizations, medications, and other matters
14 relating to his or her health.

15 A patient is responsible for reporting unexpected
16 changes in his or her condition to the health care provider.

17 A patient is responsible for reporting to the health
18 care provider whether he or she comprehends a contemplated
19 course of action, including pain management or palliative
20 care, and what is expected of him or her.

21 A patient is responsible for following the treatment
22 plan recommended by the health care provider.

23 A patient is responsible for keeping appointments and,
24 when he or she is unable to do so for any reason, for
25 notifying the health care provider or health care facility.

26 A patient is responsible for his or her actions if he
27 or she refuses treatment or does not follow the health care
28 provider's instructions.

29 A patient is responsible for assuring that the
30 financial obligations of his or her health care are fulfilled
31 as promptly as possible.

1 A patient is responsible for following health care
2 facility rules and regulations affecting patient care and
3 conduct.

4 Section 2. Paragraph (1) of subsection (3) of section
5 395.1041, Florida Statutes, is amended to read:

6 395.1041 Access to emergency services and care.--

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

9 (1) Hospital ~~emergency services~~ personnel may withhold
10 or withdraw cardiopulmonary resuscitation if presented with an
11 order not to resuscitate executed pursuant to s. 401.45.
12 Facility staff and facilities shall not be subject to criminal
13 prosecution or civil liability, nor be considered to have
14 engaged in negligent or unprofessional conduct, for
15 withholding or withdrawing cardiopulmonary resuscitation
16 pursuant to such an order.

17 Section 3. Paragraph (a) of subsection (3) of section
18 401.45, Florida Statutes, is amended to read:

19 401.45 Denial of emergency treatment; civil
20 liability.--

21 (3)(a) Resuscitation may be withheld or withdrawn from
22 a patient by an emergency medical technician or paramedic if
23 evidence of an order not to resuscitate by the patient's
24 physician is presented to the emergency medical technician or
25 paramedic. An order not to resuscitate, to be valid, must be
26 on the form adopted by rule of the department. The form must
27 be signed by the patient's physician and by the patient or, if
28 the patient is incapable of giving informed consent, the
29 patient's health care surrogate or proxy, as provided under
30 chapter 765; a court-appointed guardian, as provided under

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1 chapter 744; or a person acting pursuant to a durable power of
2 attorney, as provided under chapter 709.

3 Section 4. Section 455.597, Florida Statutes, is
4 amended to read:

5 455.597 Requirement for instruction on domestic
6 violence.--

7 (1)(a) The appropriate board shall require each person
8 licensed or certified under chapter 458, chapter 459, chapter
9 464, chapter 466, chapter 467, chapter 490, or chapter 491 to
10 complete a 1-hour continuing education course, approved by the
11 board, on domestic violence, as defined in s. 741.28, as part
12 of biennial relicensure or recertification. The course shall
13 consist of information on the number of patients in that
14 professional's practice who are likely to be victims of
15 domestic violence and the number who are likely to be
16 perpetrators of domestic violence, screening procedures for
17 determining whether a patient has any history of being either
18 a victim or a perpetrator of domestic violence, and
19 instruction on how to provide such patients with information
20 on, or how to refer such patients to, resources in the local
21 community, such as domestic violence centers and other
22 advocacy groups, that provide legal aid, shelter, victim
23 counseling, batterer counseling, or child protection services.

24 (b) Each such licensee or certificateholder shall
25 submit confirmation of having completed such course, on a form
26 provided by the board, when submitting fees for each biennial
27 renewal.

28 (c) The board may approve additional equivalent
29 courses that may be used to satisfy the requirements of
30 paragraph (a). Each licensing board that requires a licensee
31 to complete an educational course pursuant to this subsection

1 may include the hour required for completion of the course in
2 the total hours of continuing education required by law for
3 such profession unless the continuing education requirements
4 for such profession consist of fewer than 30 hours biennially.

5 (d) Any person holding two or more licenses subject to
6 the provisions of this subsection shall be permitted to show
7 proof of having taken one board-approved course on domestic
8 violence, for purposes of relicensure or recertification for
9 additional licenses.

10 (e) Failure to comply with the requirements of this
11 subsection shall constitute grounds for disciplinary action
12 under each respective practice act and under s. 455.624(1)(k).
13 In addition to discipline by the board, the licensee shall be
14 required to complete such course.

15 (2) The board shall also require, as a condition of
16 granting a license under any chapter specified in paragraph
17 (1)(a), that each applicant for initial licensure under the
18 appropriate chapter complete an educational course acceptable
19 to the board on domestic violence which is substantially
20 equivalent to the course required in subsection (1). An
21 applicant who has not taken such course at the time of
22 licensure shall, upon submission of an affidavit showing good
23 cause, be allowed 6 months to complete such requirement.

24 (3) In lieu of completing a course as required in
25 subsection (1), a licensee or certificateholder may complete a
26 course in end-of-life care and palliative health care, if the
27 licensee or certificateholder has completed an approved
28 domestic violence course in the immediately preceding
29 biennium.

30 ~~(4)(3)~~ Each board may adopt rules to carry out the
31 provisions of this section.

1 ~~(5)~~⁽⁴⁾ Each board shall report to the President of the
2 Senate, the Speaker of the House of Representatives, and the
3 chairs of the appropriate substantive committees of the
4 Legislature by March 1 of each year as to the implementation
5 of and compliance with the requirements of this section.

6 Section 5. Section 765.102, Florida Statutes, is
7 amended to read:

8 765.102 Legislative findings and intent.--

9 (1) The Legislature finds that every competent adult
10 has the fundamental right of self-determination regarding
11 decisions pertaining to his or her own health, including the
12 right to choose or refuse medical treatment. This right is
13 subject to certain interests of society, such as the
14 protection of human life and the preservation of ethical
15 standards in the medical profession.

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

27 (3) The Legislature recognizes that for some the
28 administration of life-prolonging medical procedures may
29 result in only a precarious and burdensome existence. In order
30 to ensure that the rights and intentions of a person may be
31 respected even after he or she is no longer able to

1 participate actively in decisions concerning himself or
2 herself, and to encourage communication among such patient,
3 his or her family, and his or her physician, the Legislature
4 declares that the laws of this state recognize the right of a
5 competent adult to make an advance directive instructing his
6 or her physician to provide, withhold, or withdraw
7 life-prolonging procedures, or to designate another to make
8 the treatment decision for him or her in the event that such
9 person should become incapacitated and unable to personally
10 direct his or her medical care.

11 (4) The Legislature recognizes the need for all health
12 care professionals to rapidly increase their understanding of
13 end-of-life and palliative health care. Therefore, the
14 Legislature encourages the professional regulatory boards to
15 adopt appropriate standards and guidelines regarding
16 end-of-life care and pain management and encourages
17 educational institutions established to train health care
18 professionals and allied health professionals to implement
19 curricula to train such professionals to provide end-of-life
20 care, including pain management and palliative care.

21 (5) The Department of Elderly Affairs, the Agency for
22 Health Care Administration, and the Department of Health shall
23 jointly create a campaign on end-of-life care for purposes of
24 educating the public. This campaign should include culturally
25 sensitive programs to improve understanding of end-of-life
26 care issues in minority communities.

27 Section 6. Section 765.203, Florida Statutes, is
28 amended to read:

29 765.203 Suggested form of designation.--A written
30 designation of a health care surrogate executed pursuant to
31 this chapter may, but need not be, in the following form:

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DESIGNATION OF HEALTH CARE SURROGATE

Name:....(Last)....(First)....(Middle Initial)....

In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:

Name:.....
Address:.....
..... Zip Code:.....
Phone:.....

If my surrogate is unwilling or unable to perform his or her duties, I wish to designate as my alternate surrogate:

Name:.....
Address:.....
..... Zip Code:.....
Phone:.....

I fully understand that this designation will permit my designee to make health care decisions, except for anatomical gifts, when I have executed an anatomical-gift declaration pursuant to law, and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):.....
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.....

1 I further affirm that this designation is not being
2 made as a condition of treatment or admission to a health care
3 facility. I will notify and send a copy of this document to
4 the following persons other than my surrogate, so they may
5 know who my surrogate is.

6 Name:.....

7 Name:.....

8

9

10 Signed:.....

11 Date:.....

12 Witnesses: 1.....

13 2.....

14 Section 7. Subsection (2) of section 765.204, Florida
15 Statutes, is amended to read:

16 765.204 Capacity of principal; procedure.--

17 (2) If a principal's capacity to make health care
18 decisions for herself or himself or provide informed consent
19 is in question, the attending physician shall evaluate the
20 principal's capacity and, if the physician concludes that the
21 principal lacks capacity, enter that evaluation in the
22 principal's medical record. If the attending physician has a
23 question as to whether the principal lacks capacity, another
24 physician shall also evaluate the principal's capacity, and~~,~~
25 if the second physician agrees that the principal lacks the
26 capacity to make health care decisions or provide informed
27 consent, the health care facility shall enter both physician's
28 evaluations in the principal's medical ~~clinical~~ record and~~,~~
29 If the principal has designated a health care surrogate, the
30 facility shall notify such surrogate in writing that her or
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1 his authority under the instrument has commenced, as provided
2 in s. 765.205 or chapter 709.

3 Section 8. Section 765.205, Florida Statutes, is
4 amended to read:

5 765.205 Responsibility of the surrogate.--

6 (1) The surrogate, in accordance with the principal's
7 instructions, unless such authority has been expressly limited
8 by the principal, shall:

9 (a) Have authority to act for the principal and to
10 make all health care decisions for the principal during the
11 principal's incapacity, ~~in accordance with the principal's~~
12 ~~instructions, unless such authority has been expressly limited~~
13 ~~by the principal.~~

14 (b) Consult expeditiously with appropriate health care
15 providers to provide informed consent, and make only health
16 care decisions for the principal which he or she believes the
17 principal would have made under the circumstances if the
18 principal were capable of making such decisions.

19 (c) Provide written consent using an appropriate form
20 whenever consent is required, including a physician's order
21 not to resuscitate.

22 (d) Be provided access to the appropriate medical
23 ~~clinical~~ records of the principal.

24 (e) Apply for public benefits, such as Medicare and
25 Medicaid, for the principal and have access to information
26 regarding the principal's income and assets and banking and
27 financial records to the extent required to make application.

28 A health care provider or facility may not, however, make such
29 application a condition of continued care if the principal, if
30 capable, would have refused to apply.

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1 I have a terminal condition, I have an end-stage
2 condition, or I am in a persistent vegetative state; and

3 Any limitations or conditions expressed orally or in
4 this written declaration have been carefully considered and
5 satisfied.

6
7 PROCEDURE TO DETERMINE CAPACITY OF PRINCIPAL TO MAKE HEALTH
8 CARE DECISIONS OR PROVIDE INFORMED CONSENT.--If I am unable to
9 make health care decisions for myself or if my ability to give
10 informed consent is in question, my attending physician shall
11 evaluate my capacity and, if the physician concludes that I
12 lack capacity, enter that evaluation in my medical record. If
13 my attending physician has a question as to whether I lack
14 capacity, another physician shall also evaluate my capacity.
15 If the second physician agrees that I lack capacity to make
16 health care decisions, or to give informed consent, the health
17 care facility shall enter both physician's evaluations in my
18 clinical record and, if I have designated a health care
19 surrogate, the facility shall notify such surrogate in writing
20 that my surrogate's authority under this instrument has
21 commenced.

22
23 PROCEDURE FOR DETERMINATION OF CONDITION.--In determining
24 whether I have a terminal condition, I have an end-stage
25 condition, I am in a persistent vegetative state, or whether I
26 have a medical condition or limitation referred to in this
27 advance directive, my attending or treating physician and at
28 least one other consulting physician must separately examine
29 me. The findings of each such examination must be documented
30 in my medical record and signed by each examining physician
31 before life-prolonging procedures my be withheld or withdrawn.

1
2 DECLARATION DIRECTING THAT LIFE-PROLONGING PROCEDURES BE
3 WITHHELD OR WITHDRAWN.--I direct that life-prolonging
4 procedures be withheld or withdrawn when the application of
5 such procedures would serve only to prolong artificially the
6 process of dying, and that I be permitted to die naturally
7 with only the administration of medication or the performance
8 of any medical procedure deemed necessary to provide me with
9 comfort care or to alleviate pain.
10
11 INTENT OF DECLARATION.--It is my intention that this
12 declaration be honored by my family and physician as the final
13 expression of my legal right to refuse medical or surgical
14 treatment and to accept the consequences for such refusal.
15 This advance directive instrument shall travel with me as part
16 of my medical record.
17
18 PROCEDURES FOR REFUSAL TO COMPLY WITH ADVANCE DIRECTIVE.--I
19 recognize the conditional right under section 765.1105,
20 Florida Statutes, of my health care provider or facility to
21 refuse to comply with this directive if based on any act which
22 is contrary to the provider's or facility's moral or ethical
23 beliefs and if I am:
24 1. Not in an emergency condition, and
25 2. If I or my authorized representative has received
26 written information upon admission informing me or my
27 authorized representative of the policies of the health care
28 provider or facility regarding such moral or ethical beliefs.
29
30 If a health care provider or facility meets the requirements
31 of section 765.1105, Florida Statutes, and is unwilling to

1 carry out my wishes or a treatment decision of my surrogate
2 because of moral or ethical beliefs, the health care provider
3 or facility must within 7 days either:

4 1. Transfer me to another health care provider or
5 facility and shall pay for such transport, as required under
6 section 765.1105(2)(a), Florida Statutes, or

7 2. If I have not been transferred after 6 days after
8 refusing to comply with my advance directive, carry out my
9 wishes.

10
11 RIGHT TO REFUSE TO EXECUTE A NEW, A FACILITY'S, OR A HEALTH
12 CARE PROVIDER'S ADVANCE DIRECTIVE FORM.--Pursuant to section
13 765.110, Florida Statutes, a health care provider or health
14 care facility may not require me to execute an advance
15 directive using the facility's or provider's forms.

16
17 DESIGNATION OF MY HEALTH CARE SURROGATE.--In the event that I
18 have been determined to be unable to provide express and
19 informed consent regarding the withholding, withdrawal, or
20 continuation of life-prolonging procedures, I wish to
21 designate, as my surrogate to carry out the provisions of this
22 declaration:

23
24 Name:.....
25 Address:.....
26Zip Code:.....
27 Phone:.....

28
29 I understand the full import of this declaration, and I am
30 emotionally and mentally competent to make this declaration.

31 Additional Instructions (optional):

1
2
3

4(Signed).....
5

6 Two subscribing witnesses, one of whom is neither a spouse or
7 a blood relative of the principal, must sign this document and
8 provide the information indicated.

9Witness.....

10Address.....

11Phone.....

12Witness.....

13Address.....

14Phone.....
15

16 (2) The principal's failure to designate a surrogate
17 does not invalidate the living will.

18 Section 10. Subsection (2) of section 765.305, Florida
19 Statutes, is amended to read:

20 765.305 Procedure in absence of a living will.--

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

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

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

1 Section 11. 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 or ~~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 the ~~each~~ examining physician before
13 life-prolonging procedures may be withheld or withdrawn.

14 Section 12. Subsection (3) of section 765.401, Florida
15 Statutes, is amended to read:

16 765.401 The proxy.--

17 (3) Before exercising the incapacitated patient's
18 rights to select or decline health care, the proxy must comply
19 with the pertinent provisions applicable to surrogates under
20 this chapter, except that a proxy's decision to withhold or
21 withdraw life-prolonging procedures, if challenged, ~~must~~
22 ~~either:~~

23 ~~(a) Be supported by a written declaration; or~~

24 ~~(b) If there is no written declaration, the patient~~
25 ~~must have a terminal condition, have an end-stage condition,~~
26 ~~or be in a persistent vegetative state, and the proxy's~~
27 ~~decision~~ must be supported by clear and convincing evidence
28 that the decision would have been the one the patient would
29 have chosen had the patient been competent.

30 Section 13. End-of-Life Care Workgroup.--
31

1 (1) There is created within the Department of Elderly
2 Affairs the End-of-Life Care Workgroup. The workgroup shall:

3 (a) Examine reimbursement methodologies for
4 end-of-life care;

5 (b) Identify end-of-life care standards that will
6 enable all health care providers along the health-care
7 continuum to participate in an excellent system of delivering
8 end-of-life care; and

9 (c) Develop recommendations for incentives for
10 appropriate end-of-life care.

11 (2) The workgroup is composed of the Secretary of
12 Elderly Affairs or his or her designee; the Secretary of
13 Health or his or her designee; the Director of Health Care
14 Administration or his or her designee; a member of the Senate,
15 appointed by the President of the Senate; a member of the
16 House of Representatives, appointed by the Speaker of the
17 House of Representatives; and one representative from each of
18 the following organizations: the Florida Medical Association,
19 the Florida Osteopathic Medical Association, the Florida
20 Chiropractic Association, the Florida Podiatric Medical
21 Association, the Florida Acupuncture Association, the Florida
22 Nurses Association, the Florida Optometric Association, the
23 Florida Pharmacy Association, the Florida Dental Association,
24 the Florida Association of Nursing Home Administrators, the
25 Florida Association of Occupational Therapy, the Florida
26 Association of Respiratory Therapy, the Florida Dietetic
27 Association, the Florida Hospital Association, Florida
28 Hospices and Palliative Care, Inc., the Florida Health Care
29 Association, and the Florida Association of Health Maintenance
30 Organizations.

31

