

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

317-1849B-00

1                                   A bill to be entitled  
2           An act relating to end-of-life care; amending  
3           s. 395.1041, F.S.; specifying conditions under  
4           which hospital personnel may withhold  
5           resuscitation; clarifying intent regarding  
6           orders not to resuscitate; amending ss.  
7           400.142, 400.4255, 400.6095, F.S.; clarifying  
8           intent regarding orders not to resuscitate  
9           issued and acted upon by a physician and staff,  
10          respectively, in a nursing home, assisted  
11          living facility, or hospice; amending s.  
12          401.45, F.S.; relating to emergency treatment,  
13          requiring use of official form for valid  
14          do-not-resuscitate order; specifying required  
15          signatures; specifying authorized substitute  
16          signatures; amending s. 455.597, F.S., relating  
17          to licensure renewal requirements for certain  
18          health care professionals; providing for  
19          substitution of continuing education programs  
20          or courses on end-of-life care and palliative  
21          health care for any authorized domestic  
22          violence continuing education program or course  
23          taken within a specified period; amending s.  
24          765.102, F.S., relating to legislative findings  
25          and intent; adding legislative intent to allow  
26          a person to plan for future incapacity orally  
27          or by executing a document; encouraging health  
28          care professionals to rapidly increase their  
29          understanding of end-of-life and palliative  
30          health care; requiring a statewide, culturally  
31          sensitive educational campaign on end-of-life

1 care for the general public; creating s.  
2 765.1103, F.S.; requiring certain health care  
3 facilities, health care providers, and health  
4 care practitioners to comply with patient  
5 requests for pain management and palliative  
6 care; amending s. 765.203, F.S.; revising the  
7 suggested form for designating a health care  
8 surrogate to include reference to  
9 anatomical-gift declarations; amending s.  
10 765.204, F.S.; providing a procedure for  
11 determining a principal's capacity; revising  
12 provisions; providing cross-references;  
13 amending s. 765.205, F.S.; providing  
14 responsibilities of a health care surrogate  
15 with respect to medical records of the  
16 principal; amending s. 765.303, F.S.; revising  
17 the suggested form for a living will; amending  
18 s. 765.305, F.S.; providing a procedure for  
19 withholding or withdrawing medical treatment in  
20 the absence of a living will; changing the  
21 prerequisite circumstances on which a health  
22 care surrogate must rely before authorizing  
23 withholding or withdrawing of medical treatment  
24 for another person; amending s. 765.306, F.S.,  
25 relating to determination of patient condition;  
26 changing the factors that must be evaluated for  
27 determining whether a living will may take  
28 effect; deleting the requirement for a  
29 consulting physician to separately examine the  
30 patient; amending s. 765.401, F.S.; providing a  
31 proxy to make health care decisions on behalf

1 of a patient; deleting the alternative  
2 requirements that a proxy act in accordance  
3 with a written declaration or that the patient  
4 has certain specified medical conditions before  
5 a proxy may consent to withholding or  
6 withdrawing life-prolonging procedures;  
7 providing cross-references; creating the  
8 End-of-Life Care Workgroup; providing  
9 membership of the workgroup; requiring a  
10 report; providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Paragraph (1) of subsection (3) of section  
15 395.1041, Florida Statutes, is amended to read:

16 395.1041 Access to emergency services and care.--

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

19 (1) Hospital ~~emergency services~~ personnel may withhold  
20 or withdraw cardiopulmonary resuscitation if presented with an  
21 order not to resuscitate executed pursuant to s. 401.45.  
22 Facility staff and facilities shall not be subject to criminal  
23 prosecution or civil liability, nor be considered to have  
24 engaged in negligent or unprofessional conduct, for  
25 withholding or withdrawing cardiopulmonary resuscitation  
26 pursuant to such an order. Nothing in this subsection shall  
27 affect the authority of a physician to issue an order not to  
28 resuscitate in the facility or the authority of facility staff  
29 to act in accordance with such an order, as permitted by case  
30 law and statutory law.

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1           Section 2. Subsection (3) of section 400.142, Florida  
2 Statutes, is amended to read:

3           400.142 Emergency medication kits; orders not to  
4 resuscitate.--

5           (3) Facility staff may withhold or withdraw  
6 cardiopulmonary resuscitation if presented with an order not  
7 to resuscitate executed pursuant to s. 401.45. The agency  
8 shall adopt rules providing for the implementation of such  
9 orders. Facility staff and facilities shall not be subject to  
10 criminal prosecution or civil liability, nor be considered to  
11 have engaged in negligent or unprofessional conduct, for  
12 withholding or withdrawing cardiopulmonary resuscitation  
13 pursuant to such an order and rules adopted by the agency.  
14 Nothing in this subsection shall affect the authority of a  
15 physician to issue an order not to resuscitate in the facility  
16 or the authority of facility staff to act in accordance with  
17 such an order, as permitted by case law and statutory law.

18           Section 3. Subsection (3) of section 400.4255, Florida  
19 Statutes, is amended to read:

20           400.4255 Use of personnel; emergency care.--

21           (3) Facility staff may withhold or withdraw  
22 cardiopulmonary resuscitation if presented with an order not  
23 to resuscitate executed pursuant to s. 401.45. The department  
24 shall adopt rules providing for the implementation of such  
25 orders. Facility staff and facilities shall not be subject to  
26 criminal prosecution or civil liability, nor be considered to  
27 have engaged in negligent or unprofessional conduct, for  
28 withholding or withdrawing cardiopulmonary resuscitation  
29 pursuant to such an order and rules adopted by the department.  
30 Nothing in this subsection shall affect the authority of a  
31 physician to issue an order not to resuscitate in the facility

1 or the authority of facility staff to act in accordance with  
2 such an order, as permitted by case law and statutory law.

3 Section 4. Subsection (8) of section 400.6095, Florida  
4 Statutes, is amended to read:

5 400.6095 Patient admission; assessment; plan of care;  
6 discharge; death.--

7 (8) The hospice care team may withhold or withdraw  
8 cardiopulmonary resuscitation if presented with an order not  
9 to resuscitate executed pursuant to s. 401.45. The department  
10 shall adopt rules providing for the implementation of such  
11 orders. Hospice staff shall not be subject to criminal  
12 prosecution or civil liability, nor be considered to have  
13 engaged in negligent or unprofessional conduct, for  
14 withholding or withdrawing cardiopulmonary resuscitation  
15 pursuant to such an order and rules adopted by the department.  
16 Nothing in this subsection shall affect the authority of a  
17 physician to issue an order not to resuscitate in a hospice  
18 care site or the authority of hospice staff to act in  
19 accordance with such an order, as permitted by case law and  
20 statutory law.

21 Section 5. Paragraph (a) of subsection (3) of section  
22 401.45, Florida Statutes, is amended to read:

23 401.45 Denial of emergency treatment; civil  
24 liability.--

25 (3)(a) Resuscitation may be withheld or withdrawn from  
26 a patient by an emergency medical technician or paramedic if  
27 evidence of an order not to resuscitate by the patient's  
28 physician is presented to the emergency medical technician or  
29 paramedic. An order not to resuscitate, to be valid, must be  
30 on the form adopted by rule of the department. The form must  
31 be signed by the patient's physician and by the patient or, if

1 the patient is incapable of giving informed consent, the  
2 patient's health care surrogate or proxy, as provided under  
3 chapter 765; a court-appointed guardian, as provided under  
4 chapter 744; or a person acting pursuant to a durable power of  
5 attorney, as provided under chapter 709.

6 Section 6. Section 455.597, Florida Statutes, is  
7 amended to read:

8 455.597 Requirement for instruction on domestic  
9 violence.--

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

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

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1 (c) The board may approve additional equivalent  
2 courses that may be used to satisfy the requirements of  
3 paragraph (a). Each licensing board that requires a licensee  
4 to complete an educational course pursuant to this subsection  
5 may include the hour required for completion of the course in  
6 the total hours of continuing education required by law for  
7 such profession unless the continuing education requirements  
8 for such profession consist of fewer than 30 hours biennially.

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

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

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

28 (3) In lieu of completing a course as required in  
29 subsection (1), a licensee or certificateholder may complete a  
30 course in end-of-life care and palliative health care, if the  
31 licensee or certificateholder has completed an approved

1 domestic violence course in the immediately preceding  
2 biennium.

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

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

10 Section 7. Section 765.102, Florida Statutes, is  
11 amended to read:

12 765.102 Legislative findings and intent.--

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

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

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1           (3) The Legislature recognizes that for some the  
2 administration of life-prolonging medical procedures may  
3 result in only a precarious and burdensome existence. In order  
4 to ensure that the rights and intentions of a person may be  
5 respected even after he or she is no longer able to  
6 participate actively in decisions concerning himself or  
7 herself, and to encourage communication among such patient,  
8 his or her family, and his or her physician, the Legislature  
9 declares that the laws of this state recognize the right of a  
10 competent adult to make an advance directive instructing his  
11 or her physician to provide, withhold, or withdraw  
12 life-prolonging procedures, or to designate another to make  
13 the treatment decision for him or her in the event that such  
14 person should become incapacitated and unable to personally  
15 direct his or her medical care.

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

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

1           Section 8. Section 765.1103, Florida Statutes, is  
2 created to read:

3           765.1103 Pain management and palliative care.--

4           (1) A patient shall be given information concerning  
5 pain management and palliative care when he or she discusses  
6 with the attending or treating physician, or such physician's  
7 designee, the diagnosis, planned course of treatment,  
8 alternatives, risks, or prognosis for his or her illness,  
9 unless such information is medically inadvisable or impossible  
10 to give, in which case the information must be given, when  
11 appropriate, to the patient's surrogate, proxy, guardian, or  
12 other designated representative.

13           (2) When the patient is receiving care as an admitted  
14 patient of a facility or a provider or is a subscriber of a  
15 health care facility, health care provider, or health care  
16 practitioner regulated under chapter 395, chapter 400, chapter  
17 458, chapter 459, chapter 464, or chapter 641, Florida  
18 Statutes, such facility, provider, or practitioner must, when  
19 appropriate, comply with a request for pain management or  
20 palliative care from a capacitated patient or an incapacitated  
21 patient's surrogate; proxy; representative appointed under  
22 chapter 744, if delegated the authority to make medical  
23 decisions on behalf of the patient; or a representative  
24 designated under chapter 709, who has the authority to make  
25 medical decisions on behalf of the patient.

26           Section 9. Section 765.203, Florida Statutes, is  
27 amended to read:

28           765.203 Suggested form of designation.--A written  
29 designation of a health care surrogate executed pursuant to  
30 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, unless 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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I further affirm that this designation is not being made as a condition of treatment or admission to a health care

1 facility. I will notify and send a copy of this document to  
2 the following persons other than my surrogate, so they may  
3 know who my surrogate is.  
4 Name:.....  
5 Name:.....  
6 .....  
7 .....  
8 Signed:.....  
9 Date:.....  
10 Witnesses: 1.....  
11 2.....  
12 Section 10. Subsection (2) of section 765.204, Florida  
13 Statutes, is amended to read:  
14 765.204 Capacity of principal; procedure.--  
15 (2) If a principal's capacity to make health care  
16 decisions for herself or himself or provide informed consent  
17 is in question, the attending physician shall evaluate the  
18 principal's capacity and, if the physician concludes that the  
19 principal lacks capacity, enter that evaluation in the  
20 principal's medical record. If the attending physician has a  
21 question as to whether the principal lacks capacity, another  
22 physician shall also evaluate the principal's capacity, and~~,~~  
23 if the second physician agrees that the principal lacks the  
24 capacity to make health care decisions or provide informed  
25 consent, the health care facility shall enter both physician's  
26 evaluations in the principal's medical ~~clinical~~ record and~~,~~  
27 If the principal has designated a health care surrogate, the  
28 facility shall notify such surrogate in writing that her or  
29 his authority under the instrument has commenced, as provided  
30 in s. 765.203 or chapter 709.  
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1           Section 11. Section 765.205, Florida Statutes, is  
2 amended to read:

3           765.205 Responsibility of the surrogate.--

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

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

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

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

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

22           (e) Apply for public benefits, such as Medicare and  
23 Medicaid, for the principal and have access to information  
24 regarding the principal's income and assets and banking and  
25 financial records to the extent required to make application.  
26 A health care provider or facility may not, however, make such  
27 application a condition of continued care if the principal, if  
28 capable, would have refused to apply.

29           (2) The surrogate may authorize the release of  
30 information and medical ~~clinical~~ records to appropriate  
31 persons to ensure the continuity of the principal's health

1 care and may authorize the admission, discharge, or transfer  
2 of the principal to or from a health care facility or other  
3 facility or program licensed under chapter 400.

4 (3) If, after the appointment of a surrogate, a court  
5 appoints a guardian, the surrogate shall continue to make  
6 health care decisions for the principal, unless the court has  
7 modified or revoked the authority of the surrogate pursuant to  
8 s. 744.3115. The surrogate may be directed by the court to  
9 report the principal's health care status to the guardian.

10 Section 12. Subsection (1) of section 765.303, Florida  
11 Statutes, is amended to read:

12 765.303 Suggested form of a living will.--

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

15 Living Will

16 Declaration made this .... day of ....., ...(year)...,  
17 I, ....., willfully and voluntarily make known my desire  
18 that my dying not be artificially prolonged under the  
19 circumstances set forth below, and I do hereby declare that,  
20 if at any time I am ~~both mentally and physically~~ incapacitated  
21 and

22 ...(initial)... ~~and~~ I have a terminal condition

23 or ...(initial)... ~~and~~ I have an end-stage ~~end-state~~  
24 condition

25 or ...(initial)... ~~and~~ I am in a persistent vegetative  
26 state

27  
28 and if my attending or treating physician and another  
29 consulting physician have determined that there is no  
30 reasonable medical probability of my recovery from such  
31 condition, I direct that life-prolonging procedures be

1 withheld or withdrawn when the application of such procedures  
2 would serve only to prolong artificially the process of dying,  
3 and that I be permitted to die naturally with only the  
4 administration of medication or the performance of any medical  
5 procedure deemed necessary to provide me with comfort care or  
6 to alleviate pain.

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

11           In the event that I have been determined to be unable  
12 to provide express and informed consent regarding the  
13 withholding, withdrawal, or continuation of life-prolonging  
14 procedures, I wish to designate, as my surrogate to carry out  
15 the provisions of this declaration:

16  
17 Name:.....  
18 Address:.....  
19 ..... Zip Code:.....  
20 Phone:.....

21           I understand the full import of this declaration, and I  
22 am emotionally and mentally competent to make this  
23 declaration.

24 Additional Instructions (optional):  
25 .....  
26 .....  
27 .....

28                                   ....(Signed)....  
29                                   ....Witness....  
30                                   ....Address....  
31                                   ....Phone....





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

3           765.401 The proxy.--

4           (3) Before exercising the incapacitated patient's  
5 rights to select or decline health care, the proxy must comply  
6 with the ~~pertinent~~ provisions of ss. 765.205 and 765.305  
7 ~~applicable to surrogates under this chapter~~, except that a  
8 proxy's decision to withhold or withdraw life-prolonging  
9 procedures ~~must either:~~

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

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

17           Section 16. End-of-Life Care Workgroup.--

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

20           (a) Examine reimbursement methodologies for  
21 end-of-life care;

22           (b) Identify end-of-life care standards that will  
23 enable all health care providers along the health-care  
24 continuum to participate in an excellent system of delivering  
25 end-of-life care; and

26           (c) Develop recommendations for incentives for  
27 appropriate end-of-life care.

28           (2) The workgroup is composed of the Secretary of  
29 Elderly Affairs or his or her designee; the Secretary of  
30 Health or his or her designee; the Director of Health Care  
31 Administration or his or her designee; a member of the Senate,

1 appointed by the President of the Senate; a member of the  
2 House of Representatives, appointed by the Speaker of the  
3 House of Representatives; and one representative from each of  
4 the following organizations: the Florida Hospital Association,  
5 the Florida Medical Association, the Florida Osteopathic  
6 Medical Association, the Florida Nurses Association, the  
7 Florida Acupuncture Association, the Florida Pharmacy  
8 Association, Florida Hospices and Palliative Care, Inc., the  
9 Florida Health Care Association, the Florida Assisted Living  
10 Association, the Florida Association of Homes for the Aging,  
11 the Florida Life Care Residents Association, the Florida  
12 Association of Insurance and Financial Advisors, and the  
13 Florida Association of Health Maintenance Organizations.

14 (3) The workgroup shall exist for 1 year and shall  
15 meet as often as necessary to carry out its duties and  
16 responsibilities. Within existing resources, the Department of  
17 Elderly Affairs shall provide support services to the  
18 workgroup. Workgroup members shall serve without compensation.

19 (4) The workgroup shall submit a report of its  
20 findings and recommendations to the Governor, the President of  
21 the Senate, and the Speaker of the House of Representatives by  
22 December 31, 2000.

23 (5) This section expires May 1, 2001.

24 Section 17. This act shall take effect upon becoming a  
25 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 1890

Deletes changes to the Florida Patient's Bill of Rights and Responsibilities. Clarifies that authority to recognize and act on a prehospital order not to resuscitate does not affect the authority of a physician to issue an order not to resuscitate or the authority of nursing home, assisted living facility, or hospice staff to act in accordance with such a physician order. Requires certain health care facilities, health care providers, and health care practitioners to comply with a patient's request for pain management or palliative care, when appropriate. Revises requirements for designating a health care surrogate so that determination of incapacity, instead of both mental and physical incapacity, is a prerequisite for such surrogate's authority to commence. Revises the statutory form for designation of a health care surrogate and the statutory living will form. Reinstates current law, and conforms the related statutory form, that requires a consulting physician to evaluate a patient separately from the attending or treating physician when determining a patient's condition for purposes of activating a living will or withholding or withdrawing life-prolonging procedures.