

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

308-2088-00

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 in a
10 nursing home, assisted living facility, or
11 hospice; amending s. 401.45, F.S.; relating to
12 emergency treatment, requiring use of official
13 form for valid do-not-resuscitate order;
14 specifying required signatures; specifying
15 authorized substitute signatures; amending s.
16 455.597, F.S., relating to licensure renewal
17 requirements for certain health care
18 professionals; providing for substitution of
19 continuing education programs or courses on
20 end-of-life care and palliative health care for
21 any authorized domestic violence continuing
22 education program or course taken within a
23 specified period; amending s. 765.102, F.S.,
24 relating to legislative findings and intent;
25 adding legislative intent to allow a person to
26 plan for future incapacity orally or by
27 executing a document; encouraging health care
28 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. The absence of an order not to
27 resuscitate executed pursuant to s. 401.45 does not preclude a
28 physician from withholding or withdrawing cardiopulmonary
29 resuscitation as otherwise permitted by law.

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

1 400.142 Emergency medication kits; orders not to
2 resuscitate.--

3 (3) Facility staff may withhold or withdraw
4 cardiopulmonary resuscitation if presented with an order not
5 to resuscitate executed pursuant to s. 401.45. The agency
6 shall adopt rules providing for the implementation of such
7 orders. Facility staff and facilities shall not be subject to
8 criminal prosecution or civil liability, nor be considered to
9 have engaged in negligent or unprofessional conduct, for
10 withholding or withdrawing cardiopulmonary resuscitation
11 pursuant to such an order and rules adopted by the agency. The
12 absence of an order not to resuscitate executed pursuant to s.
13 401.45 does not preclude a physician from withholding or
14 withdrawing cardiopulmonary resuscitation as otherwise
15 permitted by law.

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

18 400.4255 Use of personnel; emergency care.--

19 (3) Facility staff 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. Facility staff and facilities shall not be subject to
24 criminal prosecution or civil liability, nor be considered to
25 have 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 The absence of an order to resuscitate executed pursuant to s.
29 401.45 does not preclude a physician from withholding or
30 withdrawing cardiopulmonary resuscitation as otherwise
31 permitted by law.

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

3 400.6095 Patient admission; assessment; plan of care;
4 discharge; death.--

5 (8) The hospice care team may withhold or withdraw
6 cardiopulmonary resuscitation if presented with an order not
7 to resuscitate executed pursuant to s. 401.45. The department
8 shall adopt rules providing for the implementation of such
9 orders. Hospice staff shall not be subject to criminal
10 prosecution or civil liability, nor be considered to have
11 engaged in negligent or unprofessional conduct, for
12 withholding or withdrawing cardiopulmonary resuscitation
13 pursuant to such an order and rules adopted by the department.
14 The absence of an order to resuscitate executed pursuant to s.
15 401.45 does not preclude a physician from withholding or
16 withdrawing cardiopulmonary resuscitation as otherwise
17 permitted by law.

18 Section 5. Paragraph (a) of subsection (3) of section
19 401.45, Florida Statutes, is amended to read:

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

22 (3)(a) Resuscitation may be withheld or withdrawn from
23 a patient by an emergency medical technician or paramedic if
24 evidence of an order not to resuscitate by the patient's
25 physician is presented to the emergency medical technician or
26 paramedic. An order not to resuscitate, to be valid, must be
27 on the form adopted by rule of the department. The form must
28 be signed by the patient's physician and by the patient or, if
29 the patient is incapacitated, the patient's health care
30 surrogate or proxy as provided in chapter 765, court-appointed
31 guardian as provided in chapter 744, or attorney in fact under

1 a durable power of attorney as provided in chapter 709. The
2 court-appointed guardian or attorney in fact must have been
3 delegated authority to make health care decisions on behalf of
4 the patient.

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

7 455.597 Requirement for instruction on domestic
8 violence.--

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

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

30 (c) The board may approve additional equivalent
31 courses that may be used to satisfy the requirements of

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

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

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

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

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

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

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

8 Section 7. Section 765.102, Florida Statutes, is
9 amended to read:

10 765.102 Legislative findings and intent.--

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

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

29 (3) The Legislature recognizes that for some the
30 administration of life-prolonging medical procedures may
31 result in only a precarious and burdensome existence. In order

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

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

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

29 Section 8. Section 765.1103, Florida Statutes, is
30 created to read:

31 765.1103 Pain management and palliative care.--

1 (1) A patient shall be given information concerning
2 pain management and palliative care when he or she discusses
3 with the attending or treating physician, or such physician's
4 designee, the diagnosis, planned course of treatment,
5 alternatives, risks, or prognosis for his or her illness. If
6 the patient is incapacitated, the information shall be given
7 to the patient's health care surrogate or proxy,
8 court-appointed guardian as provided in chapter 744, or
9 attorney in fact under a durable power of attorney as provided
10 in chapter 709. The court-appointed guardian or attorney in
11 fact must have been delegated authority to make health care
12 decisions on behalf of the patient.

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 health care surrogate or proxy, court-appointed
22 guardian as provided in chapter 744, or attorney in fact as
23 provided in chapter 709. The court-appointed guardian or
24 attorney in fact must have been delegated authority to make
25 health care 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 or has
28 delegated authority to make health care decisions to an
29 attorney in fact under a durable power of attorney, the
30 facility shall notify such surrogate or attorney in fact in
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1 writing that her or his authority under the instrument has
2 commenced, as provided in s. 765.203 or chapter 709.

3 Section 11. 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 and if my attending or treating physician and another
2 consulting physician have determined that there is no
3 reasonable medical probability of my recovery from such
4 condition, I direct that life-prolonging procedures be
5 withheld or withdrawn when the application of such procedures
6 would serve only to prolong artificially the process of dying,
7 and that I be permitted to die naturally with only the
8 administration of medication or the performance of any medical
9 procedure deemed necessary to provide me with comfort care or
10 to alleviate pain.

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

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

20
21 Name:.....
22 Address:.....
23 Zip Code:.....
24 Phone:.....

25 I understand the full import of this declaration, and I
26 am emotionally and mentally competent to make this
27 declaration.

28 Additional Instructions (optional):
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1 (Signed)....
2 Witness....
3 Address....
4 Phone....
5 Witness....
6 Address....
7 Phone....
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9 Section 13. Subsection (2) of section 765.305, Florida
10 Statutes, is amended to read:

11 765.305 Procedure in absence of a living will.--

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

14 (a) The patient does not have a reasonable medical
15 probability of recovering capacity so that the right could be
16 exercised by the patient.

17 (b) ~~The patient is both mentally and physically~~
18 ~~incapacitated with no reasonable medical probability of~~
19 ~~recovery,~~ the patient has an end-stage condition, the patient
20 is in a persistent vegetative state, or the patient's physical
21 condition is terminal.

22 Section 14. Section 765.306, Florida Statutes, is
23 amended to read:

24 765.306 Determination of patient condition.--In
25 determining whether the patient has a terminal condition, has
26 an end-stage condition, or is in a persistent vegetative state
27 or may recover ~~mental and physical~~ capacity, or whether a
28 medical condition or limitation referred to in an advance
29 directive exists, the patient's attending or treating
30 physician and at least one other consulting physician must
31 separately examine the patient. The findings of each such

1 examination must be documented in the patient's medical record
2 and signed by each examining physician before life-prolonging
3 procedures may be withheld or withdrawn.

4 Section 15. 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 of ss. 765.205 and 765.305
10 ~~applicable to surrogates under this chapter~~, except that a
11 proxy's decision to withhold or withdraw life-prolonging
12 procedures ~~must either:~~

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

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

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

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

23 (a) Examine reimbursement methodologies for
24 end-of-life care;

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

29 (c) Develop recommendations for incentives for
30 appropriate end-of-life care.

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1 (2) The workgroup is composed of the Secretary of
2 Elderly Affairs or his or her designee; the Secretary of
3 Health or his or her designee; the Director of Health Care
4 Administration or his or her designee; a member of the Senate,
5 appointed by the President of the Senate; a member of the
6 House of Representatives, appointed by the Speaker of the
7 House of Representatives; and one representative from each of
8 the following organizations: the Florida Hospital Association,
9 the Florida Medical Association, the Florida Osteopathic
10 Medical Association, the Florida Nurses Association, the
11 Florida Acupuncture Association, the Florida Pharmacy
12 Association, Florida Hospices and Palliative Care, Inc., the
13 Florida Health Care Association, the Florida Assisted Living
14 Association, the Florida Association of Homes for the Aging,
15 the Florida Life Care Residents Association, the Florida
16 Association of Insurance and Financial Advisors, and the
17 Florida Association of Health Maintenance Organizations.

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

23 (4) The workgroup shall submit a report of its
24 findings and recommendations to the Governor, the President of
25 the Senate, and the Speaker of the House of Representatives by
26 December 31, 2000.

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

28 Section 17. This act shall take effect upon becoming a
29 law.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 1890

Clarifies that the absence of a do-not-resuscitate order executed by a patient in accordance with s. 401.45 does not affect a physician's authority to withhold resuscitation as allowed by law in specified facilities.

Clarifies that a court-appointed guardian or attorney in fact can only act on behalf of the patient if he or she has been delegated authority to make health care decisions for the patient.