

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to health care advance directives;
7 amending s. 765.101, F.S.; revising the definition of
8 "incapacity" or "incompetent"; amending s. 765.102, F.S.;
9 clarifying requirements on palliative care; amending s.
10 765.203, F.S.; clarifying a principal's statement of
11 understanding in suggested form for designation of health
12 care surrogate; amending s. 765.204, F.S.; eliminating the
13 requirement for written notification to health care
14 surrogates by a health care facility; amending s. 765.205,
15 F.S.; clarifying that a surrogate cannot override a
16 principal's wishes as expressed in a living will;
17 providing a standard for a surrogate's decisionmaking
18 under certain circumstances; creating s. 765.3061, F.S.;
19 requiring the Division of Driver Licenses offices to make
20 forms available to the public; requiring the Department of
21 Highway Safety and Motor Vehicles and the Agency for
22 Health Care Administration to make sample forms accessible
23 electronically on the Internet; creating s. 765.3064,

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24 F.S.; providing certain health care employees with civil
 25 and criminal immunity from acts performed in conjunction
 26 with certain information indicated by the department;
 27 expressing the sovereign immunity of the department and
 28 its employees from criminal prosecution and civil
 29 liability for certain acts; amending s. 765.401, F.S.;
 30 authorizing certain individuals or business entities to
 31 act as a proxy; amending s. 765.404, F.S.; correcting a
 32 typographical error; providing an effective date.

33

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

35

36 Section 1. Subsection (8) of section 765.101, Florida
 37 Statutes, is amended to read:

38 765.101 Definitions.--As used in this chapter:

39 (8) "Incapacity" or "incompetent" means the patient is
 40 physically ~~or mentally~~ unable to communicate a willful and
 41 knowing health care decision or lacks the mental ability, based
 42 on reasonable medical judgment, to understand or appreciate the
 43 nature and consequences of a treatment decision, including the
 44 significant benefits and harms of and reasonable alternatives to
 45 a proposed treatment decision. For the purposes of making an
 46 anatomical gift, the term also includes a patient who is
 47 deceased.

48 Section 2. Paragraph (b) of subsection (5) of section
 49 765.102, Florida Statutes, is amended to read:

50 765.102 Legislative findings and intent.--

51 (5) For purposes of this chapter:

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- 52 (b) Palliative care must include:
- 53 1. An opportunity to discuss and plan for end-of-life
- 54 care.
- 55 2. Assurance that physical and mental suffering will be
- 56 carefully attended to.
- 57 3. Assurance that preferences for withholding and
- 58 withdrawing life-sustaining interventions will be honored.
- 59 4. Assurance that the personal goals of the dying person
- 60 will be addressed.
- 61 5. Assurance that the dignity of the dying person will be
- 62 a priority.
- 63 6. Assurance that health care providers will not abandon
- 64 the dying person.
- 65 7. Assurance that the burden to family and others will be
- 66 addressed.
- 67 8. Assurance that advance directives for care will be
- 68 respected regardless of the location of care.
- 69 9. Assurance that organizational mechanisms are in place
- 70 to evaluate the availability and quality of end-of-life,
- 71 palliative, and hospice care services, including the evaluation
- 72 of administrative and regulatory barriers. These mechanisms
- 73 include institutional ethics committees, which shall have
- 74 resources and training adequate to the tasks of education,
- 75 policy creation or review, and consultation.
- 76 10. Assurance that necessary health care services will be
- 77 provided and that relevant reimbursement policies are available.
- 78 11. Assurance that the goals expressed in subparagraphs
- 79 1.-10. will be accomplished in a culturally appropriate manner.

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80 Section 3. Section 765.203, Florida Statutes, is amended
81 to read:

82 765.203 Suggested form of designation.--A written
83 designation of a health care surrogate executed pursuant to this
84 chapter may, but need not be, in the following form:

85
86 DESIGNATION OF HEALTH CARE SURROGATE

87
88 Name: _____(Last)_____(First)_____(Middle Initial)_____

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

93
94 Name:
95 Address:
96
_____ Zip Code: _____

97
98 Phone: _____

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

101 Name:
102 Address:
103
_____ Zip Code: _____

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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. I further understand that my designee has no authority to override my expressed wishes that may exist in a valid living will.

Additional instructions (optional):

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

Name:

Name:

Signed:

Date:

Witnesses: 1. _____

2. _____

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130 Section 4. Subsection (2) of section 765.204, Florida
131 Statutes, is amended to read:

132 765.204 Capacity of principal; procedure.--

133 (2) If a principal's capacity to make health care
134 decisions for herself or himself or provide informed consent is
135 in question, the attending physician shall evaluate the
136 principal's capacity and, if the physician concludes that the
137 principal lacks capacity, enter that evaluation in the
138 principal's medical record. If the attending physician has a
139 question as to whether the principal lacks capacity, another
140 physician shall also evaluate the principal's capacity, and if
141 the second physician agrees that the principal lacks the
142 capacity to make health care decisions or provide informed
143 consent, the health care facility shall enter both ~~physician's~~
144 evaluations in the principal's medical record. If the principal
145 ~~has designated a health care surrogate or~~ has delegated
146 authority to make health care decisions to an attorney in fact
147 under a durable power of attorney, the facility shall notify
148 such ~~surrogate or~~ attorney in fact in writing that her or his
149 authority under the instrument has commenced, as provided in
150 chapter 709 or s. 765.203.

151 Section 5. Paragraph (b) of subsection (1) of section
152 765.205, Florida Statutes, is amended to read:

153 765.205 Responsibility of the surrogate.--

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

157 (b) Consult expeditiously with appropriate health care
158 providers to provide informed consent, and make only health care
159 decisions for the principal which he or she believes the
160 principal would have made under the circumstances if the
161 principal were capable of making such decisions. The surrogate
162 has no authority to override the principal's wishes if these are
163 expressed in a valid living will. If there is no indication of
164 what the principal would have chosen, the surrogate may consider
165 the patient's best interest in deciding that proposed treatments
166 are to be withheld or that treatments currently in effect are to
167 be withdrawn. If the patient's best interests are vague or
168 cannot be determined, the surrogate may consider what a
169 reasonable person would decide in similar circumstances.

170 Section 6. Section 765.3061, Florida Statutes, is created
171 to read:

172 765.3061 Health care advance directive notation as part of
173 driver's license or identification card process.--Sample forms
174 consistent with this chapter that relate to the execution of a
175 health care advance directive shall be made available to the
176 public at all offices of the Division of Driver Licenses, as
177 well as electronically on the Internet through the Department of
178 Highway Safety and Motor Vehicles and the Agency for Health Care
179 Administration.

180 Section 7. Section 765.3064, Florida Statutes, is created
181 to read:

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182 765.3064 Immunity from liability.--
 183 (1) Unless provided with information or documentation to
 184 the contrary, a health care facility, health care provider, or
 185 any other person acting under the direction of a health care
 186 facility or health care provider carrying out a health care
 187 decision made in accordance with a health care advance directive
 188 executed in accordance with the provisions of this chapter is
 189 not subject to criminal prosecution or civil liability and will
 190 not be deemed to have engaged in unprofessional conduct.

191 (2) The Department of Highway Safety and Motor Vehicles
 192 and any employees acting within the scope of their employment
 193 are immune from criminal prosecution and civil liability for any
 194 acts or notations recorded in compliance with the provisions of
 195 this chapter.

196 Section 8. Paragraph (h) of subsection (1) of section
 197 765.401, Florida Statutes, is amended to read:

198 765.401 The proxy.--

199 (1) If an incapacitated or developmentally disabled
 200 patient has not executed an advance directive, or designated a
 201 surrogate to execute an advance directive, or the designated or
 202 alternate surrogate is no longer available to make health care
 203 decisions, health care decisions may be made for the patient by
 204 any of the following individuals, in the following order of
 205 priority, if no individual in a prior class is reasonably
 206 available, willing, or competent to act:

207 (h) A clinical social worker licensed pursuant to chapter
 208 491, or an individual or business entity qualified to be a
 209 professional guardian pursuant to chapter 744 ~~who is a graduate~~

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210 ~~of a court-approved guardianship program.~~ Such a proxy must be
 211 selected by the provider's bioethics committee and must not be
 212 employed by the provider. If the provider does not have a
 213 bioethics committee, then such a proxy may be chosen through an
 214 arrangement with the bioethics committee of another provider.
 215 The proxy will be notified that, upon request, the provider
 216 shall make available a second physician, not involved in the
 217 patient's care to assist the proxy in evaluating treatment.
 218 Decisions to withhold or withdraw life-prolonging procedures
 219 will be reviewed by the facility's bioethics committee.
 220 Documentation of efforts to locate proxies from prior classes
 221 must be recorded in the patient record.

222 Section 9. Subsection (2) of section 765.404, Florida
 223 Statutes, is amended to read:

224 765.404 Persistent vegetative state.--For persons in a
 225 persistent vegetative state, as determined by the attending
 226 physician in accordance with currently accepted medical
 227 standards, who have no advance directive and for whom there is
 228 no evidence indicating what the person would have wanted under
 229 such conditions, and for whom, after a reasonably diligent
 230 inquiry, no family or friends are available or willing to serve
 231 as a proxy to make health care decisions for them, life-
 232 prolonging procedures may be withheld or withdrawn under the
 233 following conditions:

234 (2) The guardian and the person's attending physician, in
 235 consultation with the medical ethics committee of the facility
 236 where the patient is located, conclude that the condition is
 237 permanent and that there is no reasonable medical probability

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238 | for recovery and that withholding or withdrawing life-prolonging
239 | procedures is in the best interest of the patient. If there is
240 | no medical ethics committee at the facility, the facility must
241 | have an arrangement with the medical ethics committee of another
242 | facility or with a community-based ethics committee approved by
243 | the Florida Bioethics ~~Bio-ethics~~ Network. The ethics committee
244 | shall review the case with the guardian, in consultation with
245 | the person's attending physician, to determine whether the
246 | condition is permanent and there is no reasonable medical
247 | probability for recovery. The individual committee members and
248 | the facility associated with an ethics committee shall not be
249 | held liable in any civil action related to the performance of
250 | any duties required in this subsection.

251 | Section 10. This act shall take effect September 1, 2005.