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A bill to be entitled  
 An act relating to the withholding or withdrawal of  
 nutrition or hydration from incompetent persons; creating  
 part VI of ch. 765, F.S.; providing a part title;  
 providing definitions; declaring that an incompetent  
 person is presumed to have directed health care providers  
 to provide the necessary nutrition and hydration to  
 sustain life; prohibiting a court, proxy, or surrogate  
 from withholding or withdrawing nutrition or hydration  
 except under specified circumstances; providing that the  
 presumption to provide nutrition and hydration is  
 inapplicable under certain circumstances; amending ss.  
 765.106, 765.107, 765.204, 765.305, 765.401, and 765.404,  
 F.S.; conforming provisions to changes made by the act;  
 prohibiting an inference of incapacity due to a person's  
 developmental disability; providing for the act to apply  
 to pending litigation; declaring that the act supersedes  
 existing court orders otherwise applicable on or after the  
 effective date of the act; providing an effective date.

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

Section 1. Part VI of chapter 765, Florida Statutes,  
 consisting of sections 765.601, 765.602, 765.603, and 765.604,  
 is created to read:

765.601 Part title.--This part may be cited as the  
"Starvation and Dehydration of Persons with Disabilities  
Prevention Act."

29 765.602 Definitions.--As used in this part, the term:

30 (1) "Express and informed consent" means consent  
 31 voluntarily given with sufficient knowledge of the subject  
 32 matter involved to enable the person giving consent to make a  
 33 knowing and understanding decision without any element of force,  
 34 fraud, deceit, duress, or other form of constraint or coercion.  
 35 Sufficient knowledge of the subject matter involved includes a  
 36 general understanding of:

37 (a) The proposed treatment or procedure for which consent  
 38 is sought.

39 (b) The medical condition of the person for whom consent  
 40 for the proposed treatment or procedure is sought.

41 (c) Any medically acceptable alternative treatment or  
 42 procedure.

43 (d) The substantial risks and hazards inherent if the  
 44 proposed treatment or procedure is carried out and if the  
 45 proposed treatment or procedure is not carried out.

46 (2) "Nutrition" means sustenance administered by way of  
 47 the gastrointestinal tract.

48 (3) "Reasonable medical judgment" means a medical judgment  
 49 that would be made by a reasonably prudent physician who is  
 50 knowledgeable about the case and the treatment possibilities  
 51 with respect to the medical conditions involved.

52 765.603 Presumption of nutrition and hydration sufficient  
 53 to sustain life.--

54 (1) Each incompetent person shall be presumed to have  
 55 directed his or her health care providers to supply him or her  
 56 with the nutrition and hydration necessary to sustain life.

57        (2) A proxy, surrogate, or court may not decide on behalf  
58 of an incompetent person to withhold or withdraw hydration or  
59 nutrition from that person except in the circumstances and under  
60 the conditions specifically provided in s. 765.604.

61        765.604 Presumption of nutrition and hydration; when  
62 inapplicable.--The presumption in s. 765.603 does not apply if:

63        (1) In reasonable medical judgment:

64        (a) The provision of nutrition or hydration is not  
65 medically possible;

66        (b) The provision of nutrition or hydration would hasten  
67 death; or

68        (c) The medical condition of the incompetent person is  
69 such that provision of nutrition or hydration would not  
70 contribute to sustaining the incompetent person's life or  
71 provide comfort to the incompetent person;

72        (2) The incompetent person has executed a written advance  
73 directive executed in another state in accordance with s.  
74 765.112, executed a designation of a health care surrogate  
75 prepared in accordance with s. 765.202, or executed a written  
76 living will prepared in accordance with s. 765.302, any of which  
77 specifically authorizes the withholding or withdrawal of  
78 nutrition or hydration, to the extent that the authorization  
79 applies; or

80        (3) There is clear and convincing evidence that the  
81 incompetent person, when competent, gave express and informed  
82 consent to withdrawing or withholding nutrition or hydration in  
83 the applicable circumstances.

84 Section 2. Section 765.106, Florida Statutes, is amended  
 85 to read:

86 765.106 Preservation of existing rights.--The provisions  
 87 of this chapter are cumulative to the existing law regarding an  
 88 individual's right to consent, or refuse to consent, to medical  
 89 treatment and do not impair any existing rights or  
 90 responsibilities which a health care provider, a patient,  
 91 including a minor, competent or incompetent person, or a  
 92 patient's family may have under the common law, Federal  
 93 Constitution, State Constitution, or statutes of this state;  
 94 however, this section may not be construed to authorize a  
 95 violation of part VI.

96 Section 3. Subsection (1) of section 765.107, Florida  
 97 Statutes, is amended to read:

98 765.107 Construction.--

99 (1) This chapter shall not be construed to repeal by  
 100 implication any provision of s. 766.103, the Florida Medical  
 101 Consent Law. For all purposes, the Florida Medical Consent Law  
 102 shall be considered an alternative to provisions of this  
 103 section; however, this section may not be construed to authorize  
 104 a violation of part VI.

105 Section 4. Section 765.204, Florida Statutes, is amended  
 106 to read:

107 765.204 Capacity of principal; procedure.--

108 (1) A principal is presumed to be capable of making health  
 109 care decisions for herself or himself unless she or he is  
 110 determined to be incapacitated. Incapacity may not be inferred  
 111 from the person's voluntary or involuntary hospitalization for

HB 0701

2005

112 mental illness or from her or his mental retardation or  
113 developmental disability.

114 (2) If a principal's capacity to make health care  
115 decisions for herself or himself or provide informed consent is  
116 in question, the attending physician shall evaluate the  
117 principal's capacity and, if the physician concludes that the  
118 principal lacks capacity, enter that evaluation in the  
119 principal's medical record. If the attending physician has a  
120 question as to whether the principal lacks capacity, another  
121 physician shall also evaluate the principal's capacity, and if  
122 the second physician agrees that the principal lacks the  
123 capacity to make health care decisions or provide informed  
124 consent, the health care facility shall enter both physician's  
125 evaluations in the principal's medical record. If the principal  
126 has designated a health care surrogate or has delegated  
127 authority to make health care decisions to an attorney in fact  
128 under a durable power of attorney, the facility shall notify  
129 such surrogate or attorney in fact in writing that her or his  
130 authority under the instrument has commenced, as provided in  
131 chapter 709 or s. 765.203.

132 (3) The surrogate's authority shall commence upon a  
133 determination under subsection (2) that the principal lacks  
134 capacity, and the ~~such~~ authority shall remain in effect until a  
135 determination that the principal has regained ~~such~~ capacity.  
136 Upon commencement of the surrogate's authority, a surrogate who  
137 is not the principal's spouse shall notify the principal's  
138 spouse or adult children of the principal's designation of the  
139 surrogate. If ~~In the event~~ the attending physician determines

140 that the principal has regained capacity, the authority of the  
 141 surrogate shall cease, but shall recommence if the principal  
 142 subsequently loses capacity as determined under ~~pursuant to~~ this  
 143 section.

144 (4) A determination made under ~~pursuant to~~ this section  
 145 that a principal lacks capacity to make health care decisions  
 146 shall not be construed as a finding that a principal lacks  
 147 capacity for any other purpose.

148 (5) In the event the surrogate is required to consent to  
 149 withholding or withdrawing life-prolonging procedures, the  
 150 provisions of parts ~~part~~ III and VI shall apply.

151 Section 5. Subsection (1) of section 765.305, Florida  
 152 Statutes, is amended to read:

153 765.305 Procedure in absence of a living will.--

154 (1) In the absence of a living will, the decision to  
 155 withhold or withdraw life-prolonging procedures from a patient  
 156 may be made by a health care surrogate designated by the patient  
 157 under ~~pursuant to~~ part II unless the designation limits the  
 158 surrogate's authority to consent to the withholding or  
 159 withdrawal of life-prolonging procedures or unless the  
 160 surrogate's authority is limited by part VI.

161 Section 6. Section 765.401, Florida Statutes, is amended  
 162 to read:

163 765.401 The proxy.--

164 (1) If an incapacitated or developmentally disabled  
 165 patient has not executed an advance directive, or designated a  
 166 surrogate to execute an advance directive, or the designated or  
 167 alternate surrogate is no longer available to make health care

168 decisions, health care decisions may be made for the patient by  
 169 any of the following individuals, in the following order of  
 170 priority, if no individual in a prior class is reasonably  
 171 available, willing, or competent to act:

172 (a) The judicially appointed guardian of the patient or  
 173 the guardian advocate of the person having a developmental  
 174 disability as defined in s. 393.063, who has been authorized to  
 175 consent to medical treatment, if such guardian has previously  
 176 been appointed; however, this paragraph shall not be construed  
 177 to require such appointment before a treatment decision can be  
 178 made under this subsection;

179 (b) The patient's spouse;

180 (c) An adult child of the patient, or if the patient has  
 181 more than one adult child, a majority of the adult children who  
 182 are reasonably available for consultation;

183 (d) A parent of the patient;

184 (e) The adult sibling of the patient or, if the patient  
 185 has more than one sibling, a majority of the adult siblings who  
 186 are reasonably available for consultation;

187 (f) An adult relative of the patient who has exhibited  
 188 special care and concern for the patient and who has maintained  
 189 regular contact with the patient and who is familiar with the  
 190 patient's activities, health, and religious or moral beliefs; ~~or~~

191 (g) A close friend of the patient; or

192 (h) A clinical social worker licensed pursuant to chapter  
 193 491, or who is a graduate of a court-approved guardianship  
 194 program. Such a proxy must be selected by the provider's  
 195 bioethics committee and must not be employed by the provider. If

HB 0701

2005

196 the provider does not have a bioethics committee, then the ~~such~~  
197 a proxy may be chosen through an arrangement with the bioethics  
198 committee of another provider. The proxy will be notified that,  
199 upon request, the provider shall make available a second  
200 physician, not involved in the patient's care to assist the  
201 proxy in evaluating treatment. Decisions to withhold or withdraw  
202 life-prolonging procedures shall ~~will~~ be reviewed by the  
203 ~~facility's~~ bioethics committee involved in the proxy's  
204 selection. Documentation of efforts to locate proxies from prior  
205 classes shall ~~must~~ be recorded in the patient record.

206 (2) Any health care decision made under this part must be  
207 based on the proxy's informed consent and on the decision the  
208 proxy reasonably believes the patient would have made under the  
209 circumstances. If there is no indication of what the patient  
210 would have chosen, the proxy may consider the patient's best  
211 interest in deciding that proposed treatments are to be withheld  
212 or that treatments currently in effect are to be withdrawn. Any  
213 decision concerning the withholding or withdrawal of nutrition  
214 or hydration must comply with part VI.

215 (3) Before exercising the incapacitated patient's rights  
216 to select or decline health care, the proxy must comply with ~~the~~  
217 ~~provisions of~~ ss. 765.205 and 765.305, except that a proxy's  
218 decision to withhold or withdraw life-prolonging procedures must  
219 be supported by clear and convincing evidence that the decision  
220 would have been the one the patient would have chosen had the  
221 patient been competent or, if there is no indication of what the  
222 patient would have chosen, that the decision is in the patient's



223 best interest. Any decision concerning the withholding or  
 224 withdrawal of nutrition or hydration must comply with part VI.

225 (4) Nothing in this section shall be construed to preempt  
 226 the designation of persons who may consent to the medical care  
 227 or treatment of minors established under ~~pursuant to~~ s.  
 228 743.0645.

229 Section 7. Section 765.404, Florida Statutes, is amended  
 230 to read:

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

241 (1) The person has a judicially appointed guardian  
 242 representing his or her best interest with authority to consent  
 243 to medical treatment. ~~;~~ ~~and~~

244 (2) The guardian and the person's attending physician, in  
 245 consultation with the medical ethics committee of the facility  
 246 where the patient is located, conclude that the condition is  
 247 permanent and that there is no reasonable medical probability  
 248 for recovery and that withholding or withdrawing life-prolonging  
 249 procedures is in the best interest of the patient. If there is  
 250 no medical ethics committee at the facility, the facility must

HB 0701

2005

251 have an arrangement with the medical ethics committee of another  
252 facility or with a community-based ethics committee approved by  
253 the Florida Bioethics ~~Bio-ethics~~ Network. The ethics committee  
254 shall review the case with the guardian, in consultation with  
255 the person's attending physician, to determine whether the  
256 condition is permanent and there is no reasonable medical  
257 probability for recovery. The individual committee members and  
258 the facility associated with an ethics committee shall not be  
259 held liable in any civil action related to the performance of  
260 any duties required in this subsection.

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262 Any decision concerning the withholding or withdrawal of  
263 nutrition or hydration must comply with part VI.

264 Section 8. This act shall apply prospectively in  
265 litigation pending on the effective date of this act and shall  
266 supersede any court order issued under the law in effect before  
267 the effective date of this act to the extent that the court  
268 order conflicts with this act and would otherwise be applied on  
269 or after the effective date of this act. This act shall apply  
270 with respect to every person living on or after the effective  
271 date of this act.

272 Section 9. This act shall take effect upon becoming law.