

1 A bill to be entitled
2 An act relating to health care representatives; amending
3 s. 765.101, F.S.; defining the terms "health care,"
4 "health care representative," and "health information" for
5 purposes of ch. 765, F.S.; revising definitions to conform
6 to changes made by the act; amending s. 765.102, F.S.;
7 revising legislative intent provisions to remove
8 references to incapacity of a principal; amending s.
9 765.103, F.S.; revising the date for confirming the
10 validity of advanced directives validly made under prior
11 law; amending s. 765.104, F.S.; conforming provisions to
12 changes made by the act; amending s. 765.105, F.S.;
13 conforming provisions to changes made by the act;
14 providing for expedited judicial intervention upon belief
15 that a health care representative has not kept the
16 principal reasonably informed of matters that he or she
17 has performed on behalf of the principal under specified
18 provisions; amending ss. 765.109, 765.1103, 765.1105, and
19 765.113, F.S.; conforming provisions to changes made by
20 the act; amending s. 765.202, F.S.; revising provisions
21 relating to the designation of health care surrogates;
22 amending s. 765.203, F.S.; conforming provisions to
23 changes made by the act; amending s. 765.204, F.S.;
24 conforming provisions to changes made by the act; deleting
25 references to medical powers of attorney; conforming a
26 cross-reference to changes made by the act; amending s.
27 765.205, F.S.; conforming provisions to changes made by
28 the act; creating s. 765.251, F.S.; providing a short

29 title; creating s. 765.252, F.S.; providing for
30 designation of a health care representative; providing for
31 execution of a designation; providing for an alternate
32 representative; providing for a designation of a separate
33 health care representative to consent to mental health
34 treatment in certain circumstances; providing for the
35 effective date of a designation; providing that a written
36 designation creates a rebuttable presumption of clear and
37 convincing evidence of the principal's designation;
38 creating s. 765.253, F.S.; providing a suggested form for
39 designation of a health care representative; creating s.
40 765.254, F.S.; providing that the designation of a health
41 care representative is not affected by a principal's
42 subsequent incapacity; creating s. 765.255, F.S.;;
43 specifying the responsibilities of a health care
44 representative; providing that the authority of a health
45 care representative is not terminated upon the appointment
46 of a guardian for a principal unless so ordered by a
47 guardianship court; amending ss. 765.304, 765.305,
48 765.401, 765.512, 765.522, 744.3115, and 872.04, F.S.;;
49 conforming provisions to changes made by the act; amending
50 ss. 394.4598 and 406.11, F.S.;; conforming cross-references
51 to changes made by the act; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Subsections (5) through (7) of section 765.101,
56 Florida Statutes, are renumbered as subsections (6) through (8),

57 | respectively, present subsections (8) through (17) are
 58 | renumbered as subsections (11) through (20), respectively, new
 59 | subsections (5), (9), and (10) are added to that section, and
 60 | present subsections (1), (5), and (16) are amended, to read:

61 | 765.101 Definitions.--As used in this chapter:

62 | (1) "Advance directive" means a witnessed written document
 63 | or oral statement in which instructions are given by a principal
 64 | or in which the principal's desires are expressed concerning any
 65 | aspect of the principal's health care, and includes, but is not
 66 | limited to, the designation of a health care surrogate, the
 67 | designation of a health care representative, a living will, or
 68 | an anatomical gift made pursuant to part VI ~~∅~~ of this chapter.

69 | (5) "Health care" means care, services, or supplies
 70 | related to the health of an individual and includes, but is not
 71 | limited to, preventive, diagnostic, therapeutic, rehabilitative,
 72 | maintenance, or palliative care, and counseling, service,
 73 | assessment, or procedure with respect to the individual's
 74 | physical or mental condition or functional status or that affect
 75 | the structure or function of the individual's body.

76 | ~~(6)~~~~(5)~~ "Health care decision" means:

77 | (a) Informed consent, refusal of consent, or withdrawal of
 78 | consent to any and all health care, including life-prolonging
 79 | procedures and mental health treatment, unless otherwise stated
 80 | in the advance directive ~~directives~~.

81 | (b) The decision to apply for private, public, government,
 82 | or veterans' benefits to defray the cost of health care.

83 | (c) The right of access to health information ~~all records~~
 84 | of the principal reasonably necessary for a health care

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85 surrogate or health care representative to make decisions
86 involving health care and to apply for benefits.

87 (d) The decision to make an anatomical gift pursuant to
88 part VI ~~∇~~ of this chapter.

89 (9) "Health care representative" means any competent adult
90 expressly designated by a principal to make health care
91 decisions or to receive health information, or both, on behalf
92 of the principal pursuant to 45 C.F.R. s. 164.504(g) and the
93 Health Insurance Portability and Accountability Act of 1996,
94 Pub. L. No. 104-191, 110 Stat. 1936, without the necessity for a
95 determination of incapacity under s. 765.204(2).

96 (10) "Health information" means any information, whether
97 oral or recorded in any form or medium, that:

98 (a) Is created or received by a health care provider,
99 health care facility, health plan, public health authority,
100 employer, life insurer, school or university, or health care
101 clearinghouse; and

102 (b) Relates to the past, present, or future physical or
103 mental health or condition of the principal; the provision of
104 health care to the principal; or the past, present, or future
105 payment for the provision of health care to the principal.

106 ~~(19)-(16)~~ (19) "Surrogate" means any competent adult expressly
107 designated by a principal to make health care decisions and to
108 receive health information on behalf of the principal upon the
109 principal's incapacity as set forth in s. 765.204.

110 Section 2. Subsections (2) and (3) of section 765.102,
111 Florida Statutes, are amended to read:

112 765.102 Legislative findings and intent.--

113 (2) To ensure that such right is not lost or diminished by
 114 virtue of later physical or mental incapacity, the Legislature
 115 intends that a procedure be established to allow a person to
 116 execute ~~plan for incapacity by executing~~ a document or orally
 117 designate ~~designating~~ another person to direct the course of his
 118 or her medical treatment ~~upon his or her incapacity~~. Such
 119 procedure should be less expensive and less restrictive than
 120 guardianship and permit a previously incapacitated person to
 121 exercise his or her full right to make health care decisions as
 122 soon as the capacity to make such decisions has been regained.

123 (3) The Legislature recognizes that for some the
 124 administration of life-prolonging medical procedures may result
 125 in only a precarious and burdensome existence. In order to
 126 ensure that the rights and intentions of a person may be
 127 respected even after he or she is no longer able to participate
 128 actively in decisions concerning himself or herself, and to
 129 encourage communication among such patient, his or her family,
 130 and his or her physician, the Legislature declares that the laws
 131 of this state recognize the right of a competent adult to make
 132 an advance directive instructing his or her physician to
 133 provide, withhold, or withdraw life-prolonging procedures, or to
 134 designate another to make the treatment decision for him or her
 135 ~~in the event that such person should become incapacitated and~~
 136 ~~unable to personally direct his or her medical care.~~

137 Section 3. Section 765.103, Florida Statutes, is amended
 138 to read:

139 765.103 Existing advance directives.--Any advance
 140 directive made prior to October 1, 2009 ~~1999~~, shall be given

141 effect as executed, provided such directive was legally
 142 effective when written.

143 Section 4. Section 765.104, Florida Statutes, is amended
 144 to read:

145 765.104 Amendment or revocation.--

146 (1) An advance directive or a designation of a health care
 147 surrogate or health care representative may be amended or
 148 revoked at any time by a competent principal:

149 (a) By means of a signed, dated writing;

150 (b) By means of the physical cancellation or destruction
 151 of the advance directive by the principal or by another in the
 152 principal's presence and at the principal's direction;

153 (c) By means of an oral expression of intent to amend or
 154 revoke; or

155 (d) By means of a subsequently executed advance directive
 156 that is materially different from a previously executed advance
 157 directive.

158 (2) Unless otherwise provided in the advance directive or
 159 in an order of dissolution or annulment of marriage, the
 160 dissolution or annulment of marriage of the principal revokes
 161 the designation of the principal's former spouse as a surrogate
 162 or health care representative.

163 (3) Any such amendment or revocation will be effective
 164 when it is communicated to the surrogate, health care
 165 representative, health care provider, or health care facility.
 166 No civil or criminal liability shall be imposed upon any person
 167 for a failure to act upon an amendment or revocation unless that
 168 person has actual knowledge of such amendment or revocation.

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169 (4) Any patient for whom a medical proxy has been
170 recognized under s. 765.401 and for whom any previous legal
171 disability that precluded the patient's ability to consent is
172 removed may amend or revoke the recognition of the medical proxy
173 and any uncompleted decision made by that proxy. The amendment
174 or revocation takes effect when it is communicated to the proxy,
175 the health care provider, or the health care facility in writing
176 or, if communicated orally, in the presence of a third person.

177 Section 5. Section 765.105, Florida Statutes, is amended
178 to read:

179 765.105 Review of surrogate, health care representative,
180 or proxy's decision.--The patient's family, the health care
181 facility, or the attending physician, or any other interested
182 person who may reasonably be expected to be directly affected by
183 the surrogate, health care representative, or proxy's decision
184 concerning any health care decision may seek expedited judicial
185 intervention pursuant to rule 5.900 of the Florida Probate
186 Rules, if that person believes:

187 (1) The surrogate, health care representative, or proxy's
188 decision is not in accord with the patient's known desires or
189 the provisions of this chapter;

190 (2) The advance directive is ambiguous, or the patient has
191 changed his or her mind after execution of the advance
192 directive;

193 (3) The surrogate, health care representative, or proxy
194 was improperly designated or appointed, or the designation of
195 the surrogate or representative is no longer effective or has
196 been revoked;

197 (4) The surrogate, health care representative, or proxy
 198 has failed to discharge duties, or incapacity or illness renders
 199 the surrogate or proxy incapable of discharging duties;

200 (5) The surrogate, health care representative, or proxy
 201 has abused his or her powers; ~~or~~

202 (6) As to a surrogate or proxy, the patient has sufficient
 203 capacity to make his or her own health care decisions; ~~or-~~

204 (7) To the extent that the principal is capable of
 205 understanding, the health care representative has not kept the
 206 principal reasonably informed of matters that he or she has
 207 performed on behalf of the principal under part III of this
 208 chapter.

209 Section 6. Subsection (1) of section 765.109, Florida
 210 Statutes, is amended to read:

211 765.109 Immunity from liability; weight of proof;
 212 presumption.--

213 (1) A health care facility, provider, or other person who
 214 acts under the direction of a health care facility or provider
 215 is not subject to criminal prosecution or civil liability, and
 216 will not be deemed to have engaged in unprofessional conduct, as
 217 a result of carrying out a health care decision made in
 218 accordance with the provisions of this chapter. The surrogate,
 219 health care representative, or proxy who makes a health care
 220 decision on a patient's behalf, pursuant to this chapter, is not
 221 subject to criminal prosecution or civil liability for such
 222 action.

223 Section 7. Section 765.1103, Florida Statutes, is amended
 224 to read:

225 | 765.1103 Pain management and palliative care.--

226 | (1) A patient shall be given information concerning pain
 227 | management and palliative care when he or she discusses with the
 228 | attending or treating physician, or such physician's designee,
 229 | the diagnosis, planned course of treatment, alternatives, risks,
 230 | or prognosis for his or her illness. If the patient is
 231 | incapacitated, the information shall be given to the patient's
 232 | health care surrogate, health care representative, ~~or~~ proxy,
 233 | court-appointed guardian as provided in chapter 744, or attorney
 234 | in fact under a durable power of attorney as provided in chapter
 235 | 709. The court-appointed guardian, health care representative,
 236 | or attorney in fact must have been delegated authority to make
 237 | health care decisions on behalf of the patient.

238 | (2) Health care providers and practitioners regulated
 239 | under chapter 458, chapter 459, or chapter 464 must, as
 240 | appropriate, comply with a request for pain management or
 241 | palliative care from a patient under their care or, for an
 242 | incapacitated patient under their care, from a surrogate, health
 243 | care representative, proxy, guardian, or other representative
 244 | permitted to make health care decisions for the incapacitated
 245 | patient. Facilities regulated under chapter 395, chapter 400, or
 246 | chapter 429 must comply with the pain management or palliative
 247 | care measures ordered by the patient's physician.

248 | Section 8. Section 765.1105, Florida Statutes, is amended
 249 | to read:

250 | 765.1105 Transfer of a patient.--

251 | (1) A health care provider or facility that refuses to
 252 | comply with a patient's advance directive, or the treatment

253 decision of his or her surrogate or health care representative,
 254 shall make reasonable efforts to transfer the patient to another
 255 health care provider or facility that will comply with the
 256 directive or treatment decision. This chapter does not require a
 257 health care provider or facility to commit any act which is
 258 contrary to the provider's or facility's moral or ethical
 259 beliefs, if the patient:

260 (a) Is not in an emergency condition; and

261 (b) Has received written information upon admission
 262 informing the patient of the policies of the health care
 263 provider or facility regarding such moral or ethical beliefs.

264 (2) A health care provider or facility that is unwilling
 265 to carry out the wishes of the patient or the treatment decision
 266 of his or her surrogate or health care representative because of
 267 moral or ethical beliefs must within 7 days either:

268 (a) Transfer the patient to another health care provider
 269 or facility. The health care provider or facility shall pay the
 270 costs for transporting the patient to another health care
 271 provider or facility; or

272 (b) If the patient has not been transferred, carry out the
 273 wishes of the patient or the patient's surrogate or health care
 274 representative, unless the provisions of s. 765.105 apply.

275 Section 9. Section 765.113, Florida Statutes, is amended
 276 to read:

277 765.113 Restrictions on providing consent.--Unless the
 278 principal expressly delegates such authority to the surrogate or
 279 health care representative in writing, or a surrogate, health
 280 care representative, or proxy has sought and received court

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281 approval pursuant to rule 5.900 of the Florida Probate Rules, a
282 surrogate, health care representative, or proxy may not provide
283 consent for:

284 (1) Abortion, sterilization, electroshock therapy,
285 psychosurgery, experimental treatments that have not been
286 approved by a federally approved institutional review board in
287 accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56, or
288 voluntary admission to a mental health facility.

289 (2) Withholding or withdrawing life-prolonging procedures
290 from a pregnant patient prior to viability as defined in s.
291 390.0111(4).

292 Section 10. Subsections (4) and (6) of section 765.202,
293 Florida Statutes, are amended to read:

294 765.202 Designation of a health care surrogate.--

295 (4) If no ~~neither the~~ designated surrogate ~~nor the~~
296 ~~designated alternate surrogate~~ is able or willing to make health
297 care decisions on behalf of the principal and in accordance with
298 the principal's instructions, the health care facility may seek
299 the appointment of a proxy pursuant to part V of this chapter
300 ~~IV~~.

301 (6) A designation of health care surrogate is effective
302 upon a determination of incapacity pursuant to s. 765.204, and
303 unless the document states a time of termination, the
304 designation shall remain in effect until revoked by the
305 principal.

306 Section 11. Section 765.203, Florida Statutes, is amended
307 to read:

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308 765.203 Suggested form of designation.--A written
 309 designation of a health care surrogate executed pursuant to this
 310 chapter may, but need not be, in the following form:

311
 312 DESIGNATION OF HEALTH CARE SURROGATE

313
 314 Name: _____ (Last) _____ (First) _____ (Middle Initial) _____
 315

316 In the event that I have been determined to be
 317 incapacitated to make health care decisions, and I have not
 318 designated a health care representative to make all health care
 319 decisions for me ~~provide informed consent for medical treatment~~
 320 ~~and surgical and diagnostic procedures~~, I ~~wish to~~ designate as
 321 my surrogate for health care decisions:
 322

323 Name:

324 Address:

325 _____ Zip Code: _____
 326

327 Phone: _____
 328

329 If my surrogate is unwilling or unable to perform his or
 330 her duties, I ~~wish to~~ designate as my alternate surrogate:
 331

332 Name:

333 Address:
 334

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_____ Zip Code: _____

Phone: _____

I fully understand that this designation will permit my designee to make health care decisions for me to the extent I have not delegated such health care decisions to my health care representative 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):

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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Section 12. Subsections (2) and (5) of section 765.204, Florida Statutes, are amended to read:

765.204 Capacity of principal; procedure.--

(2) If a principal's capacity to make health care decisions for herself or himself or provide informed consent is in question and the principal has not designated a health care representative pursuant to s. 765.252 to make all health care decisions for the principal, the attending physician shall evaluate the principal's capacity and, if the physician concludes that the principal lacks capacity, enter that evaluation in the principal's medical record. If the attending physician has a question as to whether the principal lacks capacity, another physician shall also evaluate the principal's capacity, and if the second physician agrees that the principal lacks the capacity to make health care decisions or provide informed consent, the health care facility shall enter both physician's evaluations in the principal's medical record. If the principal has designated a health care surrogate ~~or has delegated authority to make health care decisions to an attorney in fact under a durable power of attorney~~, the health care facility shall notify such surrogate or attorney in fact in writing that her or his authority under the instrument has commenced, as provided in chapter 709 or s. 765.203.

(5) In the event the surrogate is required to consent to withholding or withdrawing life-prolonging procedures, the provisions of part IV of this chapter ~~III~~ shall apply.

387 Section 13. Section 765.205, Florida Statutes, is amended
 388 to read:

389 765.205 Responsibility of the surrogate.--

390 (1) The surrogate, in accordance with the principal's
 391 instructions, unless such authority has been expressly limited
 392 by the principal or has been otherwise delegated by the
 393 principal to a health care representative, shall:

394 (a) Have authority to act for the principal and to make
 395 ~~all~~ health care decisions for the principal during the
 396 principal's incapacity not otherwise delegated to a health care
 397 representative.

398 (b) Consult expeditiously with appropriate health care
 399 providers to provide informed consent, and make only health care
 400 decisions for the principal which he or she believes the
 401 principal would have made under the circumstances if the
 402 principal were capable of making such decisions. If there is no
 403 indication of what the principal would have chosen, the
 404 surrogate may consider the patient's best interest in deciding
 405 that proposed treatments are to be withheld or that treatments
 406 currently in effect are to be withdrawn.

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

410 (d) Be provided access to the appropriate health
 411 information ~~medical records~~ of the principal.

412 (e) Apply for public benefits, such as Medicare and
 413 Medicaid, for the principal and have access to information
 414 regarding the principal's income and assets and banking and

415 financial records to the extent required to make application. A
 416 health care provider or facility may not, however, make such
 417 application a condition of continued care if the principal, if
 418 capable, would have refused to apply.

419 (2) The surrogate may authorize the release of health
 420 information ~~and medical records~~ to appropriate persons to ensure
 421 the continuity of the principal's health care and may authorize
 422 the admission, discharge, or transfer of the principal to or
 423 from a health care facility or other facility or program
 424 licensed under chapter 400 or chapter 429.

425 (3) If, after the appointment of a surrogate, a court
 426 appoints a guardian, the surrogate shall continue to make health
 427 care decisions for the principal, unless the court has modified
 428 or revoked the authority of the surrogate pursuant to s.
 429 744.3115. The surrogate may be directed by the court to report
 430 the principal's health care status to the guardian.

431 Section 14. Parts III through V of chapter 765, Florida
 432 Statutes, are redesignated as parts IV through VI, respectively,
 433 and a new part III of that chapter, consisting of sections
 434 765.251, 765.252, 765.253, 765.254, and 765.255, Florida
 435 Statutes, is created to read:

436 PART III

437 HEALTH CARE REPRESENTATIVE

438 765.251 Short title.--This part may be cited as the
 439 "Florida Health Care Representative Act."

440 765.252 Designation of a health care representative.--

441 (1) A written document designating a health care
 442 representative to make health care decisions for a principal or

443 to receive health information on behalf of a principal, or both,
444 shall be signed by the principal in the presence of two
445 subscribing adult witnesses. A principal unable to sign the
446 instrument may, in the presence of witnesses, direct that
447 another person sign the principal's name as required in this
448 section. An exact copy of the instrument shall be provided to
449 the health care representative.

450 (2) The person designated as a health care representative
451 may not act as a witness to the execution of the document
452 designating himself or herself as a health care representative.
453 At least one person who acts as a witness may not be either the
454 principal's spouse nor blood relative.

455 (3) A document designating a health care representative
456 may designate an alternate health care representative provided
457 the designation is explicit. The alternate health care
458 representative may assume his or her duties as health care
459 representative for the principal if the original health care
460 representative is unwilling or unable to perform his or her
461 duties. The principal's failure to designate an alternate health
462 care representative shall not invalidate the designation of a
463 health care representative.

464 (4) A principal may designate a separate health care
465 representative to consent to mental health treatment in the
466 event that the principal is determined by a court to be
467 incompetent to consent to mental health treatment and a guardian
468 advocate is appointed as provided under s. 394.4598. However,
469 unless the document designating the health care representative
470 expressly states otherwise, the court shall assume that the

471 health care representative authorized to make health care
 472 decisions under this chapter is also the principal's choice to
 473 make decisions regarding mental health treatment.

474 (5) A designation of health care representative is
 475 effective as of the date of execution, and unless the document
 476 states a time of termination, the designation shall remain in
 477 effect until revoked by the principal.

478 (6) A written designation of a health care representative
 479 executed pursuant to this section establishes a rebuttable
 480 presumption of clear and convincing evidence of the principal's
 481 designation of the health care representative.

482 765.253 Suggested form of designation.--A written
 483 designation of a health care representative executed pursuant to
 484 this chapter may, but need not be, in the following form:

485

486 DESIGNATION OF HEALTH CARE REPRESENTATIVE

487

488 I, [(name) (Last) (First) (Middle Initial)], hereby
 489 designate as my health care representative under s. 765.252,
 490 Florida Statutes:

491

492 Name: _____

493

494 Address: _____

495

496 Phone: _____

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498 If my health care representative is unwilling or unable to
 499 perform his or her duties, I wish to designate as my alternate
 500 health care representative:

501
 502 Name: _____

503
 504 Address: _____

505
 506 Phone: _____

507
 508 I authorize my health care representative to:

509
 510 _____ (Initials) Receive any of my health information,
 511 whether oral or recorded in any form or medium, that:

512 1. Is created or received by a health care provider,
 513 health care facility, health plan, public health authority,
 514 employer, life insurer, school or university, or health care
 515 clearinghouse; and

516 2. Relates to my past, present, or future physical or
 517 mental health or condition; the provision of health care to me;
 518 or the past, present, or future payment for the provision of
 519 health care to me.

520
 521 I further authorize my health care representative to:

522
 523 _____ (Initials) Make all health care decisions for me,
 524 which means he or she has the authority to:

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525 1. Provide informed consent, refusal of consent, or
 526 withdrawal of consent to any and all of my health care,
 527 including life-prolonging procedures.

528 2. Apply on my behalf for private, public, government, or
 529 veteran's benefits to defray the cost of health care.

530 3. Access my health information reasonably necessary for
 531 the health care representative to make decisions involving my
 532 health care and to apply for benefits.

533 4. Decide to make an anatomical gift pursuant to part VI
 534 of chapter 765, Florida Statutes.

535 (Initials) Specific instructions and restrictions:

536 _____
 537 _____
 538 _____

539
 540 To the extent I am capable of understanding, my health care
 541 representative shall keep me reasonably informed of all matters
 542 that he or she has performed on my behalf.

543
 544 I further affirm that this designation is not being made as a
 545 condition of treatment or admission to a health care facility.

546
 547 I will notify and send a copy of this document to the following
 548 persons other than my health care representative, so they may
 549 know who my health care representative is.

550
 551 Name: _____

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553 Name: _____

554

555 THIS HEALTH CARE REPRESENTATIVE DESIGNATION IS NOT AFFECTED BY
 556 MY SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765,
 557 FLORIDA STATUTES.

558

559 Signed: _____

560

561 Date: _____

562

563 Witnesses:

564

565 1. _____

566 2. _____

567

568 765.254 Capacity of principal.--

569 (1) A health care representative designation is not
 570 affected by the subsequent incapacity of the principal. The form
 571 designating the representative must contain the words: "This
 572 representative designation in not affected by the subsequent
 573 incapacity of the principal except as provided in chapter 765,
 574 Florida Statutes" or similar words that show the principal's
 575 intent that the authority conferred is exercisable
 576 notwithstanding the principal's subsequent incapacity, except as
 577 otherwise provided in this chapter.

578 (2) If any person or entity initiates proceedings in any
 579 court of competent jurisdiction to determine the principal's
 580 incapacity, the authority granted the health care representative

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581 under the representative designation is not affected as to
582 making health care decisions or receiving health information on
583 behalf of the principal under this chapter unless otherwise
584 ordered by the court.

585 (3) Any health care facility or health care provider may
586 rely upon the authority granted in a representative designation
587 until the health care facility or health care provider has
588 received notice as provided in s. 765.104(3).

589 765.255 Responsibility of the health care
590 representative.--

591 (1) The health care representative, to the extent given
592 authority to make health care decisions pursuant to s. 765.252,
593 unless such authority had been expressly limited by the
594 principal or has been otherwise reserved exclusively by the
595 principal to a health care surrogate, shall:

596 (a) Have authority to act for the principal and to make
597 all health care decisions for the principal.

598 (b) Consult expeditiously with appropriate health care
599 providers to provide informed consent and make only health care
600 decisions for the principal that he or she believes the
601 principal would have made under the circumstances. If there is
602 no indication of what the principal would have chosen, the
603 health care representative may consider the principal's best
604 interest in deciding whether proposed treatments are to be
605 withheld or that treatments currently in effect are to be
606 withdrawn.

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

610 (d) Be provided access to the health information of the
611 principal.

612 (e) Apply for public benefits, such as Medicare and
613 Medicaid, for the principal and have access to information
614 regarding the principal's income and assets and banking and
615 financial records to the extent required to make application. A
616 health care provider or facility may not, however, make such
617 application a condition of continued care if the principal, if
618 capable, would have refused to apply.

619 (f) Authorize the release of health information to
620 appropriate persons to ensure the continuity of the principal's
621 health care and may authorize the admission, discharge, or
622 transfer of the principal to or from a health care facility or
623 other facility or program licensed under chapter 400 or chapter
624 429.

625 (2) The health care representative, if only given
626 authority to receive health information pursuant to s. 765.252,
627 unless such authority had been expressly limited by the
628 principal, shall be limited to the authority set forth in
629 paragraphs (1)(d), (e), and (f).

630 (3) To the extent the principal is capable of
631 understanding, the health care representative shall keep the
632 principal reasonably informed of all matters that he or she has
633 performed on behalf of the principal under subsections (1) and
634 (2).

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635 (4) If, after the designation of a health care
636 representative, a court appoints a guardian, the health care
637 representative shall continue to make health care decisions for
638 the principal, unless the court has modified or revoked the
639 authority of the health care representative pursuant to s.
640 744.3115. The health care representative may be directed by the
641 court to report the principal's health care status to the
642 guardian.

643 Section 15. Subsection (1) of section 765.304, Florida
644 Statutes, is amended to read:

645 765.304 Procedure for living will.--

646 (1) If a person has made a living will expressing his or
647 her desires concerning life-prolonging procedures, but has not
648 designated a surrogate to execute his or her wishes concerning
649 life-prolonging procedures or designated a surrogate under part
650 II of this chapter or a health care representative under part
651 III of this chapter, the attending physician may proceed as
652 directed by the principal in the living will. In the event of a
653 dispute or disagreement concerning the attending physician's
654 decision to withhold or withdraw life-prolonging procedures, the
655 attending physician shall not withhold or withdraw life-
656 prolonging procedures pending review under s. 765.105. If a
657 review of a disputed decision is not sought within 7 days
658 following the attending physician's decision to withhold or
659 withdraw life-prolonging procedures, the attending physician may
660 proceed in accordance with the principal's instructions.

661 Section 16. Section 765.305, Florida Statutes, is amended
662 to read:

663 765.305 Procedure in absence of a living will.--

664 (1) In the absence of a living will, the decision to
 665 withhold or withdraw life-prolonging procedures from a patient
 666 may be made by a health care surrogate designated by the patient
 667 pursuant to part II of this chapter or a health care
 668 representative designated by the patient pursuant to part III of
 669 this chapter unless the designation limits the surrogate's or
 670 health care representative's authority to consent to the
 671 withholding or withdrawal of life-prolonging procedures.

672 (2) Before exercising the incompetent patient's right to
 673 forego treatment, the surrogate or health care representative
 674 must be satisfied that:

675 (a) The patient does not have a reasonable medical
 676 probability of recovering capacity so that the right could be
 677 exercised by the patient.

678 (b) The patient has an end-stage condition, the patient is
 679 in a persistent vegetative state, or the patient's physical
 680 condition is terminal.

681 Section 17. Subsection (1) of section 765.401, Florida
 682 Statutes, is amended to read:

683 765.401 The proxy.--

684 (1) If an incapacitated or developmentally disabled
 685 patient has not executed an advance directive, designated a
 686 health care surrogate or health care representative to make
 687 health care decisions, or designated a surrogate to execute an
 688 advance directive, and no surrogate or health care
 689 representative is ~~or the designated or alternate surrogate is no~~
 690 ~~longer~~ available to make health care decisions, health care

691 decisions may be made for the patient by any of the following
692 individuals, in the following order of priority, if no
693 individual in a prior class is reasonably available, willing, or
694 competent to act:

695 (a) The judicially appointed guardian of the patient or
696 the guardian advocate of the person having a developmental
697 disability as defined in s. 393.063, who has been authorized to
698 consent to medical treatment, if such guardian has previously
699 been appointed; however, this paragraph shall not be construed
700 to require such appointment before a treatment decision can be
701 made under this subsection;

702 (b) The patient's spouse;

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

706 (d) A parent of the patient;

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

710 (f) An adult relative of the patient who has exhibited
711 special care and concern for the patient and who has maintained
712 regular contact with the patient and who is familiar with the
713 patient's activities, health, and religious or moral beliefs; or

714 (g) A close friend of the patient.

715 (h) A clinical social worker licensed pursuant to chapter
716 491, or who is a graduate of a court-approved guardianship
717 program. Such a proxy must be selected by the provider's
718 bioethics committee and must not be employed by the provider. If

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719 the provider does not have a bioethics committee, then such a
720 proxy may be chosen through an arrangement with the bioethics
721 committee of another provider. The proxy will be notified that,
722 upon request, the provider shall make available a second
723 physician, not involved in the patient's care to assist the
724 proxy in evaluating treatment. Decisions to withhold or withdraw
725 life-prolonging procedures will be reviewed by the facility's
726 bioethics committee. Documentation of efforts to locate proxies
727 from prior classes must be recorded in the patient record.

728 Section 18. Subsections (1), (2), and (3) of section
729 765.512, Florida Statutes, are amended to read:

730 765.512 Persons who may make an anatomical gift.--

731 (1) Any person who may make a will may give all or part of
732 his or her body for any purpose specified in s. 765.513. The
733 gift is effective upon the death of the donor.

734 (a) If the decedent makes an anatomical gift by one of the
735 methods listed in s. 765.514(1), and in the absence of actual
736 notice of contrary indications by the decedent, the document or
737 entry in the organ and tissue registry is legally sufficient
738 evidence of the decedent's informed consent to donate an
739 anatomical gift.

740 (b) An anatomical gift made by a qualified donor and not
741 revoked by the donor, as provided in s. 765.516, is irrevocable
742 after the donor's death. A family member, guardian,
743 representative ad litem, ~~or~~ health care surrogate, or health
744 care representative may not modify, deny, or prevent a donor's
745 wish or intent to make an anatomical gift after the donor's
746 death.

747 (2) A health care surrogate designated by the decedent
748 pursuant to part II of this chapter or health care
749 representative designated by the decedent pursuant to part III
750 of this chapter may give all or any part of the decedent's body
751 for any purpose specified in s. 765.513 absent actual notice of
752 contrary indications by the decedent.

753 (3) If the decedent has not made an anatomical gift, or
754 designated a health care surrogate pursuant to part II of this
755 chapter or a health care representative pursuant to part III of
756 this chapter, a member of one of the classes of persons listed
757 below, in the order of priority listed and in the absence of
758 actual notice of contrary indications by the decedent or actual
759 notice of opposition by a member of a prior class, may give all
760 or any part of the decedent's body for any purpose specified in
761 s. 765.513:

- 762 (a) The spouse of the decedent;
763 (b) An adult son or daughter of the decedent;
764 (c) Either parent of the decedent;
765 (d) An adult brother or sister of the decedent;
766 (e) An adult grandchild of the decedent;
767 (f) A grandparent of the decedent;
768 (g) A close personal friend, as defined in s. 765.101;
769 (h) A guardian of the person of the decedent at the time
770 of his or her death; or
771 (i) A representative ad litem appointed by a court of
772 competent jurisdiction upon a petition heard ex parte filed by
773 any person, who shall ascertain that no person of higher
774 priority exists who objects to the gift of all or any part of

775 the decedent's body and that no evidence exists of the
 776 decedent's having made a communication expressing a desire that
 777 his or her body or body parts not be donated upon death.

778
 779 Those of higher priority who are reasonably available must be
 780 contacted and made aware of the proposed gift and a reasonable
 781 search must be conducted which shows that there would have been
 782 no objection to the gift by the decedent.

783 Section 19. Subsection (2) of section 765.522, Florida
 784 Statutes, is amended to read:

785 765.522 Duty of certain hospital administrators; liability
 786 of hospital administrators, organ procurement organizations, eye
 787 banks, and tissue banks.--

788 (2) Where, based on accepted medical standards, a hospital
 789 patient is a suitable candidate for organ or tissue donation,
 790 the hospital administrator or the hospital administrator's
 791 designee shall, at or near the time of death, notify the
 792 appropriate organ, eye, or tissue recovery program, which shall
 793 access the organ and tissue donor registry created by s.

794 765.5155 to ascertain the existence of an entry in the registry
 795 that has not been revoked, a donor card, or a document executed
 796 by the decedent. In the absence of an entry in the donor
 797 registry, donor card, organ donation sticker or organ donation
 798 imprint on a driver's license, or other properly executed
 799 document, the organ, eye, or tissue recovery program shall
 800 request:

801 (a) The patient's health care surrogate or health care
 802 representative, as authorized in s. 765.512(2); or

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803 (b) If the patient does not have a health care surrogate
804 or health care representative, or the health care surrogate or
805 health care representative is not reasonably available, any of
806 the persons specified in s. 765.512(3), in the order and manner
807 listed,

808
809 to consent to the gift of all or any part of the decedent's body
810 for any purpose specified in this part. Except as provided in s.
811 765.512, in the absence of actual notice of opposition, consent
812 need only be obtained from the person or persons in the highest
813 priority class reasonably available.

814 Section 20. Section 744.3115, Florida Statutes, is amended
815 to read:

816 744.3115 Advance directives for health care.--In each
817 proceeding in which a guardian is appointed under this chapter,
818 the court shall determine whether the ward, prior to incapacity,
819 has executed any valid advance directive under chapter 765. If
820 any advance directive exists, the court shall specify in its
821 order and letters of guardianship what authority, if any, the
822 guardian shall exercise over the surrogate. Pursuant to the
823 grounds listed in s. 765.105, the court, upon its own motion,
824 may, with notice to the health care surrogate, health care
825 representative, and any other appropriate parties, modify or
826 revoke the authority of the health care surrogate or health care
827 representative to make health care decisions for the ward. For
828 purposes of this section, the term "health care decision" has
829 the same meaning as in s. 765.101.

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830 Section 21. Subsection (2) of section 872.04, Florida
831 Statutes, is amended to read:

832 872.04 Autopsies; consent required, exception.--

833 (2) Unless otherwise authorized by statute, no autopsy
834 shall be performed without the written consent by the health
835 care representative, as provided in s. 765.252, or if there is
836 no health care representative, by the health care surrogate, as
837 provided in s. 765.202, if one has been designated. If a health
838 care representative or a health care surrogate has not been
839 designated, then written consent may be provided by the spouse,
840 nearest relative, or, if no such next of kin can be found, the
841 person who has assumed custody of the body for purposes of
842 burial. When two or more persons assume custody of the body for
843 such purposes, then the consent of any one of them shall be
844 sufficient to authorize the autopsy.

845 Section 22. Subsection (6) of section 394.4598, Florida
846 Statutes, is amended to read:

847 394.4598 Guardian advocate.--

848 (6) If a guardian with the authority to consent to medical
849 treatment has not already been appointed or if the patient has
850 not already designated a health care surrogate, the court may
851 authorize the guardian advocate to consent to medical treatment,
852 as well as mental health treatment. Unless otherwise limited by
853 the court, a guardian advocate with authority to consent to
854 medical treatment shall have the same authority to make health
855 care decisions and be subject to the same restrictions as a
856 proxy appointed under part V ~~IV~~ of chapter 765. Unless the
857 guardian advocate has sought and received express court approval

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858 | in proceeding separate from the proceeding to determine the
859 | competence of the patient to consent to medical treatment, the
860 | guardian advocate may not consent to:

861 | (a) Abortion.

862 | (b) Sterilization.

863 | (c) Electroconvulsive treatment.

864 | (d) Psychosurgery.

865 | (e) Experimental treatments that have not been approved by
866 | a federally approved institutional review board in accordance
867 | with 45 C.F.R. part 46 or 21 C.F.R. part 56.

868 |

869 | The court must base its decision on evidence that the treatment
870 | or procedure is essential to the care of the patient and that
871 | the treatment does not present an unreasonable risk of serious,
872 | hazardous, or irreversible side effects. The court shall follow
873 | the procedures set forth in subsection (1) of this section.

874 | Section 23. Paragraph (b) of subsection (2) of section
875 | 406.11, Florida Statutes, is amended to read:

876 | 406.11 Examinations, investigations, and autopsies.--

877 | (2)

878 | (b) The Medical Examiners Commission shall adopt rules,
879 | pursuant to chapter 120, providing for the notification of the
880 | next of kin that an investigation by the medical examiner's
881 | office is being conducted. A medical examiner may not retain or
882 | furnish any body part of the deceased for research or any other
883 | purpose which is not in conjunction with a determination of the
884 | identification of or cause or manner of death of the deceased or
885 | the presence of disease or which is not otherwise authorized by

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886 | this chapter, part VI ~~∇~~ of chapter 765, or chapter 873, without
887 | notification of and approval by the next of kin.

888 | Section 24. This act shall take effect October 1, 2009.