

By Senator Fasano

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

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30 765.251, F.S.; providing a short title; creating s.
31 765.252, F.S.; providing for designation of a health
32 care representative; providing for execution of a
33 designation; providing for an alternate
34 representative; providing for a designation of a
35 separate health care representative to consent to
36 mental health treatment in certain circumstances;
37 providing for the effective date of a designation;
38 providing that a written designation creates a
39 rebuttable presumption of clear and convincing
40 evidence of the principal's designation; creating s.
41 765.253, F.S.; providing a suggested form for
42 designation of a health care representative; creating
43 s. 765.254, F.S.; providing that the designation of a
44 health care representative is not affected by a
45 principal's subsequent incapacity; creating s.
46 765.255, F.S.; specifying the responsibilities of a
47 health care representative; providing that the
48 authority of a health care representative is not
49 terminated upon the appointment of a guardian for a
50 principal unless so ordered by a guardianship court;
51 amending ss. 765.304, 765.305, 765.401, 765.512,
52 765.522, 744.3115, and 872.04, F.S.; conforming
53 provisions to changes made by the act; amending ss.
54 394.4598 and 406.11, F.S.; conforming cross-references
55 to changes made by the act; providing an effective
56 date.

57
58 Be It Enacted by the Legislature of the State of Florida:

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59
60 Section 1. Subsections (5) through (7) of section 765.101,
61 Florida Statutes, are renumbered as subsections (6) through (8),
62 respectively, present subsections (8) through (17) are
63 renumbered as subsections (11) through (20), respectively, new
64 subsections (5), (9), and (10) are added to that section, and
65 present subsections (1), (5), and (16) are amended, to read:

66 765.101 Definitions.—As used in this chapter:

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

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

81 (6) ~~(5)~~ "Health care decision" means:

82 (a) Informed consent, refusal of consent, or withdrawal of
83 consent to any and all health care, including life-prolonging
84 procedures and mental health treatment, unless otherwise stated
85 in the advance directive ~~directives~~.

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

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88 (c) The right of access to health information ~~all records~~
89 of the principal reasonably necessary for a health care
90 surrogate or health care representative to make decisions
91 involving health care and to apply for benefits.

92 (d) The decision to make an anatomical gift pursuant to
93 part VI ~~7~~ of this chapter.

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

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

103 (a) Is created or received by a health care provider,
104 health care facility, health plan, public health authority,
105 employer, life insurer, school or university, or health care
106 clearinghouse; and

107 (b) Relates to the past, present, or future physical or
108 mental health or condition of the principal; the provision of
109 health care to the principal; or the past, present, or future
110 payment for the provision of health care to the principal.

111 ~~(19)-(16)~~ "Surrogate" means any competent adult expressly
112 designated by a principal to make health care decisions and to
113 receive health information on behalf of the principal upon the
114 principal's incapacity as set forth in s. 765.204.

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

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117 765.102 Legislative findings and intent.—

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

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

142 Section 3. Section 765.103, Florida Statutes, is amended to
143 read:

144 765.103 Existing advance directives.—Any advance directive
145 made prior to October 1, 2009 ~~1999~~, shall be given effect as

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146 executed, provided such directive was legally effective when
147 written.

148 Section 4. Section 765.104, Florida Statutes, is amended to
149 read:

150 765.104 Amendment or revocation.—

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

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

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

158 (c) By means of an oral expression of intent to amend or
159 revoke; or

160 (d) By means of a subsequently executed advance directive
161 that is materially different from a previously executed advance
162 directive.

163 (2) Unless otherwise provided in the advance directive or
164 in an order of dissolution or annulment of marriage, the
165 dissolution or annulment of marriage of the principal revokes
166 the designation of the principal's former spouse as a surrogate
167 or health care representative.

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

174 (4) Any patient for whom a medical proxy has been

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175 recognized under s. 765.401 and for whom any previous legal
176 disability that precluded the patient's ability to consent is
177 removed may amend or revoke the recognition of the medical proxy
178 and any uncompleted decision made by that proxy. The amendment
179 or revocation takes effect when it is communicated to the proxy,
180 the health care provider, or the health care facility in writing
181 or, if communicated orally, in the presence of a third person.

182 Section 5. Section 765.105, Florida Statutes, is amended to
183 read:

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

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

195 (2) The advance directive is ambiguous, or the patient has
196 changed his or her mind after execution of the advance
197 directive;

198 (3) The surrogate, health care representative, or proxy was
199 improperly designated or appointed, or the designation of the
200 surrogate or representative is no longer effective or has been
201 revoked;

202 (4) The surrogate, health care representative, or proxy has
203 failed to discharge duties, or incapacity or illness renders the

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204 surrogate or proxy incapable of discharging duties;

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

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

209 (7) To the extent that the principal is capable of
210 understanding, the health care representative has not kept the
211 principal reasonably informed of matters that he or she has
212 performed on behalf of the principal under part III of this
213 chapter.

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

216 765.109 Immunity from liability; weight of proof;
217 presumption.-

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

228 Section 7. Section 765.1103, Florida Statutes, is amended
229 to read:

230 765.1103 Pain management and palliative care.-

231 (1) A patient shall be given information concerning pain
232 management and palliative care when he or she discusses with the

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233 attending or treating physician, or such physician's designee,
234 the diagnosis, planned course of treatment, alternatives, risks,
235 or prognosis for his or her illness. If the patient is
236 incapacitated, the information shall be given to the patient's
237 health care surrogate, health care representative, ~~or~~ proxy,
238 court-appointed guardian as provided in chapter 744, or attorney
239 in fact under a durable power of attorney as provided in chapter
240 709. The court-appointed guardian, health care representative,
241 or attorney in fact must have been delegated authority to make
242 health care decisions on behalf of the patient.

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

253 Section 8. Section 765.1105, Florida Statutes, is amended
254 to read:

255 765.1105 Transfer of a patient.—

256 (1) A health care provider or facility that refuses to
257 comply with a patient's advance directive, or the treatment
258 decision of his or her surrogate or health care representative,
259 shall make reasonable efforts to transfer the patient to another
260 health care provider or facility that will comply with the
261 directive or treatment decision. This chapter does not require a

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262 health care provider or facility to commit any act which is
263 contrary to the provider's or facility's moral or ethical
264 beliefs, if the patient:

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

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

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

273 (a) Transfer the patient to another health care provider or
274 facility. The health care provider or facility shall pay the
275 costs for transporting the patient to another health care
276 provider or facility; or

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

280 Section 9. Section 765.113, Florida Statutes, is amended to
281 read:

282 765.113 Restrictions on providing consent.—Unless the
283 principal expressly delegates such authority to the surrogate or
284 health care representative in writing, or a surrogate, health
285 care representative, or proxy has sought and received court
286 approval pursuant to rule 5.900 of the Florida Probate Rules, a
287 surrogate, health care representative, or proxy may not provide
288 consent for:

289 (1) Abortion, sterilization, electroshock therapy,
290 psychosurgery, experimental treatments that have not been

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291 approved by a federally approved institutional review board in
 292 accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56, or
 293 voluntary admission to a mental health facility.

294 (2) Withholding or withdrawing life-prolonging procedures
 295 from a pregnant patient prior to viability as defined in s.
 296 390.0111(4).

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

299 765.202 Designation of a health care surrogate.—

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

306 (6) A designation of health care surrogate is effective
 307 upon a determination of incapacity pursuant to s. 765.204, and
 308 unless the document states a time of termination, the
 309 designation shall remain in effect until revoked by the
 310 principal.

311 Section 11. Section 765.203, Florida Statutes, is amended
 312 to read:

313 765.203 Suggested form of designation.—A written
 314 designation of a health care surrogate executed pursuant to this
 315 chapter may, but need not be, in the following form:

316 DESIGNATION OF HEALTH CARE SURROGATE

317
 318 Name:.....(Last).....(First).....(Middle Initial).....

319 In the event that I have been determined to be

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320 incapacitated to make health care decisions, and I have not
 321 designated a health care representative to make all health care
 322 decisions for me ~~provide informed consent for medical treatment~~
 323 ~~and surgical and diagnostic procedures,~~ I ~~wish to~~ designate as
 324 my surrogate for health care decisions:
 325

326 Name:.....
 327 Address:.....
 Zip Code:.....

328
329
330 Phone:.....

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

333 Name:.....
 334 Address:.....
 Zip Code:.....

335
336
337 Phone:.....

338 I fully understand that this designation will permit my
 339 designee to make health care decisions for me to the extent I
 340 have not delegated such health care decisions to my health care
 341 representative and to provide, withhold, or withdraw consent on
 342 my behalf; to apply for public benefits to defray the cost of
 343 health care; and to authorize my admission to or transfer from a
 344 health care facility.

345 Additional instructions (optional):.....
 346

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347
348

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

354 Name:
355 Name:
356
357

358 Signed:
359 Date:

Witnesses: 1.....
2.....

361
362

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

365 765.204 Capacity of principal; procedure.-

366 (2) If a principal's capacity to make health care decisions
367 for herself or himself or provide informed consent is in
368 question and the principal has not designated a health care
369 representative pursuant to s. 765.252 to make all health care
370 decisions for the principal, the attending physician shall
371 evaluate the principal's capacity and, if the physician
372 concludes that the principal lacks capacity, enter that
373 evaluation in the principal's medical record. If the attending

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374 physician has a question as to whether the principal lacks
375 capacity, another physician shall also evaluate the principal's
376 capacity, and if the second physician agrees that the principal
377 lacks the capacity to make health care decisions or provide
378 informed consent, the health care facility shall enter both
379 physician's evaluations in the principal's medical record. If
380 the principal has designated a health care surrogate ~~or has~~
381 ~~delegated authority to make health care decisions to an attorney~~
382 ~~in fact under a durable power of attorney~~, the health care
383 facility shall notify such surrogate ~~or attorney in fact~~ in
384 writing that her or his authority under the instrument has
385 commenced, ~~as provided in chapter 709 or s. 765.203.~~

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

389 Section 13. Section 765.205, Florida Statutes, is amended
390 to read:

391 765.205 Responsibility of the surrogate.—

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

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

400 (b) Consult expeditiously with appropriate health care
401 providers to provide informed consent, and make only health care
402 decisions for the principal which he or she believes the

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403 principal would have made under the circumstances if the
404 principal were capable of making such decisions. If there is no
405 indication of what the principal would have chosen, the
406 surrogate may consider the patient's best interest in deciding
407 that proposed treatments are to be withheld or that treatments
408 currently in effect are to be withdrawn.

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

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

414 (e) Apply for public benefits, such as Medicare and
415 Medicaid, for the principal and have access to information
416 regarding the principal's income and assets and banking and
417 financial records to the extent required to make application. A
418 health care provider or facility may not, however, make such
419 application a condition of continued care if the principal, if
420 capable, would have refused to apply.

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

427 (3) If, after the appointment of a surrogate, a court
428 appoints a guardian, the surrogate shall continue to make health
429 care decisions for the principal, unless the court has modified
430 or revoked the authority of the surrogate pursuant to s.
431 744.3115. The surrogate may be directed by the court to report

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432 the principal's health care status to the guardian.

433 Section 14. Parts III through V of chapter 765, Florida
434 Statutes, are redesignated as parts IV through VI, respectively,
435 and a new part III of that chapter, consisting of sections
436 765.251, 765.252, 765.253, 765.254, and 765.255, Florida
437 Statutes, is created to read:

438 Part III

439 HEALTH CARE REPRESENTATIVE

440 765.251 Short title.—This part may be cited as the “Florida
441 Health Care Representative Act.”

442 765.252 Designation of a health care representative.—

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

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

457 (3) A document designating a health care representative may
458 designate an alternate health care representative provided the
459 designation is explicit. The alternate health care
460 representative may assume his or her duties as health care

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461 representative for the principal if the original health care
462 representative is unwilling or unable to perform his or her
463 duties. The principal's failure to designate an alternate health
464 care representative shall not invalidate the designation of a
465 health care representative.

466 (4) A principal may designate a separate health care
467 representative to consent to mental health treatment in the
468 event that the principal is determined by a court to be
469 incompetent to consent to mental health treatment and a guardian
470 advocate is appointed as provided under s. 394.4598. However,
471 unless the document designating the health care representative
472 expressly states otherwise, the court shall assume that the
473 health care representative authorized to make health care
474 decisions under this chapter is also the principal's choice to
475 make decisions regarding mental health treatment.

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

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

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

487

488 DESIGNATION OF HEALTH CARE REPRESENTATIVE

489

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

493
494 Name: _____

495
496 Address: _____

497
498 Phone: _____

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

503
504 Name: _____

505
506 Address: _____

507
508 Phone: _____

509
510 I authorize my health care representative to:

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

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

- 518 2. Relates to my past, present, or future physical or

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519 mental health or condition; the provision of health care to me;
520 or the past, present, or future payment for the provision of
521 health care to me.

522
523 I further authorize my health care representative to:

524
525 ____ (Initials) Make all health care decisions for me, which
526 means he or she has the authority to:

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

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

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

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

537 ____ (Initials) Specific instructions and restrictions:

538 _____
539 _____
540 _____

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

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

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

Name: _____

Name: _____

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

Signed: _____

Date: _____

Witnesses:

1. _____

2. _____

765.254 Capacity of principal.—

(1) A health care representative designation is not affected by the subsequent incapacity of the principal. The form designating the representative must contain the words: "This representative designation in not affected by the subsequent incapacity of the principal except as provided in chapter 765, Florida Statutes" or similar words that show the principal's

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577 intent that the authority conferred is exercisable
578 notwithstanding the principal's subsequent incapacity, except as
579 otherwise provided in this chapter.

580 (2) If any person or entity initiates proceedings in any
581 court of competent jurisdiction to determine the principal's
582 incapacity, the authority granted the health care representative
583 under the representative designation is not affected as to
584 making health care decisions or receiving health information on
585 behalf of the principal under this chapter unless otherwise
586 ordered by the court.

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

591 765.255 Responsibility of the health care representative.-

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

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

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

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606 withheld or that treatments currently in effect are to be
607 withdrawn.

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

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

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

620 (f) Authorize the release of health information to
621 appropriate persons to ensure the continuity of the principal's
622 health care and may authorize the admission, discharge, or
623 transfer of the principal to or from a health care facility or
624 other facility or program licensed under chapter 400 or chapter
625 429.

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

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

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635 (2).

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

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

646 765.304 Procedure for living will.—

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

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

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664 765.305 Procedure in absence of a living will.—

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

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

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

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

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

684 765.401 The proxy.—

685 (1) If an incapacitated or developmentally disabled patient
686 has not executed an advance directive, designated a health care
687 surrogate or health care representative to make health care
688 decisions, or designated a surrogate to execute an advance
689 directive, and no surrogate or health care representative is ~~or~~
690 ~~the designated or alternate surrogate is no longer~~ available to
691 make health care decisions, health care decisions may be made
692 for the patient by any of the following individuals, in the

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693 following order of priority, if no individual in a prior class
694 is reasonably available, willing, or competent to act:

695 (a) The judicially appointed guardian of the patient or the
696 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 has
708 more than one sibling, a majority of the adult siblings who are
709 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; or-

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
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,

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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

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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 of
770 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

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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

803 (b) If the patient does not have a health care surrogate or
804 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,
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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.

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

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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
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

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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
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.