



828562

LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/23/2015 03:48 PM

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Senator Joyner moved the following:

**Senate Amendment (with title amendment)**

Delete lines 443 - 654

and insert:

While I have decisionmaking capacity, my wishes are controlling and my physicians and health care providers must clearly communicate to me the treatment plan or any change to the treatment plan prior to its implementation.

To the extent I am capable of understanding, my health care surrogate shall keep me reasonably informed of all decisions



828562

12 that he or she has made on my behalf and matters concerning me.  
13  
14 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY  
15 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA  
16 STATUTES.  
17  
18 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT  
19 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND  
20 THIS DESIGNATION BY:  
21 (1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES  
22 MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;  
23 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN  
24 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY  
25 DIRECTION;  
26 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE  
27 THIS DESIGNATION; OR  
28 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT  
29 FROM THIS DESIGNATION.  
30  
31 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY  
32 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN  
33 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE  
34 FOLLOWING BOXES:  
35  
36 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S  
37 AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT  
38 IMMEDIATELY.  
39  
40 IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S



828562

41 AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT  
42 IMMEDIATELY. PURSUANT TO SECTION 765.204(3), FLORIDA STATUTES,  
43 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS I MAKE, EITHER  
44 VERBALLY OR IN WRITING, WHILE I POSSESS CAPACITY SHALL SUPERSEDE  
45 ANY INSTRUCTIONS OR HEALTH CARE DECISIONS MADE BY MY SURROGATE  
46 THAT ARE IN MATERIAL CONFLICT WITH THOSE MADE BY ME.

47  
48 SIGNATURES: Sign and date the form here:

49 ...(date)... ..(sign your name)...  
50 ...(address)... ..(print your name)...  
51 ...(city)... ..(state)...

52  
53 SIGNATURES OF WITNESSES:

54 First witness \_\_\_\_\_ Second witness  
55 ...(print name)... ...(print name)...  
56 ...(address)... ...(address)...  
57 ...(city)... ...(state)... ...(city)... ...(state)...  
58 ...(signature of witness)... ...(signature of witness)...  
59 ...(date)... ...(date)...

60 Name:.....(Last).....(First).....(Middle Initial).....

61 ~~In the event that I have been determined to be~~  
62 ~~incapacitated to provide informed consent for medical treatment~~  
63 ~~and surgical and diagnostic procedures, I wish to designate as~~  
64 ~~my surrogate for health care decisions:~~

65 ~~Name:\_\_\_\_\_~~

66 ~~Address:\_\_\_\_\_~~

67

68

~~.....~~

~~Zip Code:.....~~



828562

69 Phone:.....

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

72 Name:\_\_\_\_\_

73 Address:\_\_\_\_\_

74  
75

..... Zip Code:.....

76 Phone:.....

77 ~~I fully understand that this designation will permit my~~  
78 ~~designee to make health care decisions and to provide, withhold,~~  
79 ~~or withdraw consent on my behalf; to apply for public benefits~~  
80 ~~to defray the cost of health care; and to authorize my admission~~  
81 ~~to or transfer from a health care facility.~~

82 Additional instructions (optional):\_\_\_\_\_

83 .....

84 .....

85 .....

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

91 Name:\_\_\_\_\_

92 Name:\_\_\_\_\_

93 .....

94 .....

95 Signed:\_\_\_\_\_

96 Date:\_\_\_\_\_



828562

97

98

Witnesses:           1.——

99

                          2.——

100           Section 10. Section 765.2035, Florida Statutes, is created  
101 to read:

102           765.2035 Designation of a health care surrogate for a  
103 minor.—

104           (1) A natural guardian as defined in s. 744.301(1), legal  
105 custodian, or legal guardian of the person of a minor may  
106 designate a competent adult to serve as a surrogate to make  
107 health care decisions for the minor. Such designation shall be  
108 made by a written document signed by the minor's principal in  
109 the presence of two subscribing adult witnesses. If a minor's  
110 principal is unable to sign the instrument, the principal may,  
111 in the presence of witnesses, direct that another person sign  
112 the minor's principal's name as required by this subsection. An  
113 exact copy of the instrument shall be provided to the surrogate.

114           (2) The person designated as surrogate may not act as  
115 witness to the execution of the document designating the health  
116 care surrogate.

117           (3) A document designating a health care surrogate may also  
118 designate an alternate surrogate; however, such designation must  
119 be explicit. The alternate surrogate may assume his or her  
120 duties as surrogate if the original surrogate is not willing,  
121 able, or reasonably available to perform his or her duties. The  
122 minor's principal's failure to designate an alternate surrogate  
123 does not invalidate the designation.



828562

124       (4) If neither the designated surrogate or the designated  
125 alternate surrogate is willing, able, or reasonably available to  
126 make health care decisions for the minor on behalf of the  
127 minor's principal and in accordance with the minor's principal's  
128 instructions, s. 743.0645(2) shall apply as if no surrogate had  
129 been designated.

130       (5) A natural guardian as defined in s. 744.301(1), legal  
131 custodian, or legal guardian of the person of a minor may  
132 designate a separate surrogate to consent to mental health  
133 treatment for the minor. However, unless the document  
134 designating the health care surrogate expressly states  
135 otherwise, the court shall assume that the health care surrogate  
136 authorized to make health care decisions for a minor under this  
137 chapter is also the minor's principal's choice to make decisions  
138 regarding mental health treatment for the minor.

139       (6) Unless the document states a time of termination, the  
140 designation shall remain in effect until revoked by the minor's  
141 principal. An otherwise valid designation of a surrogate for a  
142 minor shall not be invalid solely because it was made before the  
143 birth of the minor.

144       (7) A written designation of a health care surrogate  
145 executed pursuant to this section establishes a rebuttable  
146 presumption of clear and convincing evidence of the minor's  
147 principal's designation of the surrogate and becomes effective  
148 pursuant to s. 743.0645(2)(a).

149       Section 11. Section 765.2038, Florida Statutes, is created  
150 to read:

151       765.2038 Designation of health care surrogate for a minor;  
152 suggested form.—A written designation of a health care surrogate



828562

153 for a minor executed pursuant to this chapter may, but need to  
154 be, in the following form:

155 DESIGNATION OF HEALTH CARE SURROGATE

156 FOR MINOR

157 I/We, ... (name/names) ..., the [...] natural guardian(s)  
158 as defined in s. 744.301(1), Florida Statutes; [...] legal  
159 custodian(s); [...] legal guardian(s) [check one] of the  
160 following minor(s):

- 161
- 162 .....;
- 163 .....;
- 164 .....,

165

166 pursuant to s. 765.2035, Florida Statutes, designate the  
167 following person to act as my/our surrogate for health care  
168 decisions for such minor(s) in the event that I/we am/are not  
169 able or reasonably available to provide consent for medical  
170 treatment and surgical and diagnostic procedures:

- 171
- 172 Name: ... (name) ...
- 173 Address: ... (address) ...
- 174 Zip Code: ... (zip code) ...
- 175 Phone: ... (telephone) ...

176

177 If my/our designated health care surrogate for a minor is  
178 not willing, able, or reasonably available to perform his or her  
179 duties, I/we designate the following person as my/our alternate  
180 health care surrogate for a minor:

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828562

182 Name: ... (name)...  
183 Address: ... (address)...  
184 Zip Code: ... (zip code)...  
185 Phone: ... (telephone)...  
186

187 I/We authorize and request all physicians, hospitals, or  
188 other providers of medical services to follow the instructions  
189 of my/our surrogate or alternate surrogate, as the case may be,  
190 at any time and under any circumstances whatsoever, with regard  
191 to medical treatment and surgical and diagnostic procedures for  
192 a minor, provided the medical care and treatment of any minor is  
193 on the advice of a licensed physician.  
194

195 I/We fully understand that this designation will permit  
196 my/our designee to make health care decisions for a minor and to  
197 provide, withhold, or withdraw consent on my/our behalf, to  
198 apply for public benefits to defray the cost of health care, and  
199 to authorize the admission or transfer of a minor to or from a  
200 health care facility.  
201

202 I/We will notify and send a copy of this document to the  
203 following person(s) other than my/our surrogate, so that they  
204 may know the identity of my/our surrogate:  
205

206 Name: ... (name)...  
207 Name: ... (name)...  
208  
209 Signed: ... (signature)...  
210 Date: ... (date)...





828562

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WITNESSES:

- 1. ... (witness) ...
- 2. ... (witness) ...

Section 12. Section 765.204, Florida Statutes, is amended to read:

765.204 Capacity of principal; procedure.-

(1) A principal is presumed to be capable of making health care decisions for herself or himself unless she or he is determined to be incapacitated. While a principal has decisionmaking capacity, the principal's wishes are controlling. Each physician or health care provider must clearly communicate to a principal with decisionmaking capacity the treatment plan and any change to the treatment plan prior to implementation of the plan or the change to the plan. Incapacity may not be inferred from the person's voluntary or involuntary hospitalization for mental illness or from her or his intellectual disability.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 42

and insert:

minor; amending s. 765.204, F.S.; specifying that a principal's wishes are controlling while he or she has decisionmaking capacity; providing a duty for health care providers to communicate to such a principal; conforming