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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (1) and paragraph
(a) of subsection (2) of section 743.0645, Florida Statutes, are
amended to read:

743.0645 Other persons who may consent to medical care or
treatment of a minor.—

(1) As used in this section, the term:

(b) "Medical care and treatment" includes ordinary and



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12 necessary medical and dental examination and treatment,
13 including blood testing, preventive care including ordinary
14 immunizations, tuberculin testing, and well-child care, but does
15 not include surgery, general anesthesia, provision of
16 psychotropic medications, or other extraordinary procedures for
17 which a separate court order, health care surrogate designation
18 under s. 765.2035 executed after September 30, 2015, power of
19 attorney executed after July 1, 2001, or informed consent as
20 provided by law is required, except as provided in s. 39.407(3).

21 (2) Any of the following persons, in order of priority
22 listed, may consent to the medical care or treatment of a minor
23 who is not committed to the Department of Children and Families
24 or the Department of Juvenile Justice or in their custody under
25 chapter 39, chapter 984, or chapter 985 when, after a reasonable
26 attempt, a person who has the power to consent as otherwise
27 provided by law cannot be contacted by the treatment provider
28 and actual notice to the contrary has not been given to the
29 provider by that person:

30 (a) A health care surrogate designated under s. 765.2035
31 after September 30, 2015, or a person who possesses a power of
32 attorney to provide medical consent for the minor. A health care
33 surrogate designation under s. 765.2035 executed after September
34 30, 2015, and a power of attorney executed after July 1, 2001,
35 to provide medical consent for a minor includes the power to
36 consent to medically necessary surgical and general anesthesia
37 services for the minor unless such services are excluded by the
38 individual executing the health care surrogate for a minor or
39 power of attorney.
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41 There shall be maintained in the treatment provider's records of
42 the minor documentation that a reasonable attempt was made to
43 contact the person who has the power to consent.

44 Section 2. Section 765.101, Florida Statutes, is amended to
45 read:

46 765.101 Definitions.—As used in this chapter:

47 (1) "Advance directive" means a witnessed written document
48 or oral statement in which instructions are given by a principal
49 or in which the principal's desires are expressed concerning any
50 aspect of the principal's health care or health information, and
51 includes, but is not limited to, the designation of a health
52 care surrogate, a living will, or an anatomical gift made
53 pursuant to part V of this chapter.

54 (2) "Attending physician" means the ~~primary~~ physician who
55 has primary responsibility for the treatment and care of the
56 patient while the patient receives such treatment or care in a
57 hospital as defined in s. 395.002(12).

58 (3) "Close personal friend" means any person 18 years of
59 age or older who has exhibited special care and concern for the
60 patient, and who presents an affidavit to the health care
61 facility or to the primary ~~attending or treating~~ physician
62 stating that he or she is a friend of the patient; is willing
63 and able to become involved in the patient's health care; and
64 has maintained such regular contact with the patient so as to be
65 familiar with the patient's activities, health, and religious or
66 moral beliefs.

67 (4) "End-stage condition" means an irreversible condition
68 that is caused by injury, disease, or illness which has resulted
69 in progressively severe and permanent deterioration, and which,



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70 to a reasonable degree of medical probability, treatment of the
71 condition would be ineffective.

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

79 (6)~~(5)~~ "Health care decision" means:

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

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

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

90 (d) The decision to make an anatomical gift pursuant to
91 part V of this chapter.

92 (7)~~(6)~~ "Health care facility" means a hospital, nursing
93 home, hospice, home health agency, or health maintenance
94 organization licensed in this state, or any facility subject to
95 part I of chapter 394.

96 (8)~~(7)~~ "Health care provider" or "provider" means any
97 person licensed, certified, or otherwise authorized by law to
98 administer health care in the ordinary course of business or



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99 practice of a profession.

100 (9) "Health information" means any information, whether
101 oral or recorded in any form or medium, as defined in 45 C.F.R.
102 s. 160.103 and the Health Insurance Portability and
103 Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended,
104 that:

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

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

113 (10)-(8) "Incapacity" or "incompetent" means the patient is
114 physically or mentally unable to communicate a willful and
115 knowing health care decision. For the purposes of making an
116 anatomical gift, the term also includes a patient who is
117 deceased.

118 (11)-(9) "Informed consent" means consent voluntarily given
119 by a person after a sufficient explanation and disclosure of the
120 subject matter involved to enable that person to have a general
121 understanding of the treatment or procedure and the medically
122 acceptable alternatives, including the substantial risks and
123 hazards inherent in the proposed treatment or procedures, and to
124 make a knowing health care decision without coercion or undue
125 influence.

126 (12)-(10) "Life-prolonging procedure" means any medical
127 procedure, treatment, or intervention, including artificially



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128 provided sustenance and hydration, which sustains, restores, or
129 supplants a spontaneous vital function. The term does not
130 include the administration of medication or performance of
131 medical procedure, when such medication or procedure is deemed
132 necessary to provide comfort care or to alleviate pain.

133 (13)~~(11)~~ "Living will" or "declaration" means:

134 (a) A witnessed document in writing, voluntarily executed
135 by the principal in accordance with s. 765.302; or

136 (b) A witnessed oral statement made by the principal
137 expressing the principal's instructions concerning life-
138 prolonging procedures.

139 (14) "Minor's principal" means a principal who is a natural
140 guardian as defined in s. 744.301(1); legal custodian; or,
141 subject to chapter 744, legal guardian of the person of a minor.

142 (15)~~(12)~~ "Persistent vegetative state" means a permanent
143 and irreversible condition of unconsciousness in which there is:

144 (a) The absence of voluntary action or cognitive behavior
145 of any kind.

146 (b) An inability to communicate or interact purposefully
147 with the environment.

148 (16)~~(13)~~ "Physician" means a person licensed pursuant to
149 chapter 458 or chapter 459.

150 (17) "Primary physician" means a physician designated by an
151 individual or the individual's surrogate, proxy, or agent under
152 a durable power of attorney, as provided in chapter 709, to have
153 primary responsibility for the individual's health care or, in
154 the absence of a designation or if the designated physician is
155 not reasonably available, a physician who undertakes the
156 responsibility.



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157 ~~(18)-(14)~~ "Principal" means a competent adult executing an
158 advance directive and on whose behalf health care decisions are
159 to be made or health care information is to be received, or
160 both.

161 ~~(19)-(15)~~ "Proxy" means a competent adult who has not been
162 expressly designated to make health care decisions for a
163 particular incapacitated individual, but who, nevertheless, is
164 authorized pursuant to s. 765.401 to make health care decisions
165 for such individual.

166 ~~(20)~~ "Reasonably available" means readily able to be
167 contacted without undue effort and willing and able to act in a
168 timely manner considering the urgency of the patient's health
169 care needs.

170 ~~(21)-(16)~~ "Surrogate" means any competent adult expressly
171 designated by a principal to make health care decisions and to
172 receive health information. The principal may stipulate whether
173 the authority of the surrogate to make health care decisions or
174 to receive health information is exercisable immediately without
175 the necessity for a determination of incapacity or only upon the
176 principal's incapacity as provided in s. 765.204 ~~on behalf of~~
177 the principal upon the principal's incapacity.

178 ~~(22)-(17)~~ "Terminal condition" means a condition caused by
179 injury, disease, or illness from which there is no reasonable
180 medical probability of recovery and which, without treatment,
181 can be expected to cause death.

182 Section 3. Subsections (3) through (6) of section 765.102,
183 Florida Statutes, are renumbered as subsections (4) through (7),
184 respectively, present subsections (2) and (3) are amended, and a
185 new subsection (3) is added to that section, to read:



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186 765.102 Legislative findings and intent.—

187 (2) To ensure that such right is not lost or diminished by
188 virtue of later physical or mental incapacity, the Legislature
189 intends that a procedure be established to allow a person to
190 plan for incapacity by executing a document or orally
191 designating another person to direct the course of his or her
192 health care or receive his or her health information, or both,
193 ~~medical treatment~~ upon his or her incapacity. Such procedure
194 should be less expensive and less restrictive than guardianship
195 and permit a previously incapacitated person to exercise his or
196 her full right to make health care decisions as soon as the
197 capacity to make such decisions has been regained.

198 (3) The Legislature also recognizes that some competent
199 adults may want to receive immediate assistance in making health
200 care decisions or accessing health information, or both, without
201 a determination of incapacity. The Legislature intends that a
202 procedure be established to allow a person to designate a
203 surrogate to make health care decisions or receive health
204 information, or both, without the necessity for a determination
205 of incapacity under this chapter.

206 (4)~~(3)~~ The Legislature recognizes that for some the
207 administration of life-prolonging medical procedures may result
208 in only a precarious and burdensome existence. In order to
209 ensure that the rights and intentions of a person may be
210 respected even after he or she is no longer able to participate
211 actively in decisions concerning himself or herself, and to
212 encourage communication among such patient, his or her family,
213 and his or her physician, the Legislature declares that the laws
214 of this state recognize the right of a competent adult to make



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215 an advance directive instructing his or her physician to
216 provide, withhold, or withdraw life-prolonging procedures, or to
217 designate another to make the health care ~~treatment~~ decision for
218 him or her in the event that such person should become
219 incapacitated and unable to personally direct his or her health
220 ~~medical~~ care.

221 Section 4. Subsection (1) of section 765.104, Florida
222 Statutes, is amended to read:

223 765.104 Amendment or revocation.—

224 (1) An advance directive ~~or designation of a surrogate~~ may
225 be amended or revoked at any time by a competent principal:

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

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

230 (c) By means of an oral expression of intent to amend or
231 revoke; or

232 (d) By means of a subsequently executed advance directive
233 that is materially different from a previously executed advance
234 directive.

235 Section 5. Section 765.105, Florida Statutes, is amended to
236 read:

237 765.105 Review of surrogate or proxy's decision.—

238 (1) The patient's family, the health care facility, or the
239 primary attending physician, or any other interested person who
240 may reasonably be expected to be directly affected by the
241 surrogate or proxy's decision concerning any health care
242 decision may seek expedited judicial intervention pursuant to
243 rule 5.900 of the Florida Probate Rules, if that person



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244 believes:

245 ~~(a)(1)~~ The surrogate or proxy's decision is not in accord
246 with the patient's known desires or ~~the provisions of this~~
247 chapter;

248 ~~(b)(2)~~ The advance directive is ambiguous, or the patient
249 has changed his or her mind after execution of the advance
250 directive;

251 ~~(c)(3)~~ The surrogate or proxy was improperly designated or
252 appointed, or the designation of the surrogate is no longer
253 effective or has been revoked;

254 ~~(d)(4)~~ The surrogate or proxy has failed to discharge
255 duties, or incapacity or illness renders the surrogate or proxy
256 incapable of discharging duties;

257 ~~(e)(5)~~ The surrogate or proxy has abused his or her powers;
258 or

259 ~~(f)(6)~~ The patient has sufficient capacity to make his or
260 her own health care decisions.

261 (2) This section does not apply to a patient who is not
262 incapacitated and who has designated a surrogate who has
263 immediate authority to make health care decisions and receive
264 health information, or both, on behalf of the patient.

265 Section 6. Subsection (1) of section 765.1103, Florida
266 Statutes, is amended to read:

267 765.1103 Pain management and palliative care.—

268 (1) A patient shall be given information concerning pain
269 management and palliative care when he or she discusses with the
270 primary attending or treating physician, or such physician's
271 designee, the diagnosis, planned course of treatment,
272 alternatives, risks, or prognosis for his or her illness. If the



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273 patient is incapacitated, the information shall be given to the
274 patient's health care surrogate or proxy, court-appointed
275 guardian as provided in chapter 744, or attorney in fact under a
276 durable power of attorney as provided in chapter 709. The court-
277 appointed guardian or attorney in fact must have been delegated
278 authority to make health care decisions on behalf of the
279 patient.

280 Section 7. Section 765.1105, Florida Statutes, is amended
281 to read:

282 765.1105 Transfer of a patient.—

283 (1) A health care provider or facility that refuses to
284 comply with a patient's advance directive, or the treatment
285 decision of his or her surrogate or proxy, shall make reasonable
286 efforts to transfer the patient to another health care provider
287 or facility that will comply with the directive or treatment
288 decision. This chapter does not require a health care provider
289 or facility to commit any act which is contrary to the
290 provider's or facility's moral or ethical beliefs, if the
291 patient:

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

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

296 (2) A health care provider or facility that is unwilling to
297 carry out the wishes of the patient or the treatment decision of
298 his or her surrogate or proxy because of moral or ethical
299 beliefs must within 7 days either:

300 (a) Transfer the patient to another health care provider or
301 facility. The health care provider or facility shall pay the



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302 costs for transporting the patient to another health care
303 provider or facility; or

304 (b) If the patient has not been transferred, carry out the
305 wishes of the patient or the patient's surrogate or proxy,
306 unless ~~the provisions of s. 765.105~~ applies ~~apply~~.

307 Section 8. Subsections (1), (3), and (4) of section
308 765.202, Florida Statutes, are amended, subsections (6) and (7)
309 are renumbered as subsections (7) and (8), respectively, and a
310 new subsection (6) is added to that section, to read:

311 765.202 Designation of a health care surrogate.-

312 (1) A written document designating a surrogate to make
313 health care decisions for a principal or receive health
314 information on behalf of a principal, or both, shall be signed
315 by the principal in the presence of two subscribing adult
316 witnesses. A principal unable to sign the instrument may, in the
317 presence of witnesses, direct that another person sign the
318 principal's name as required herein. An exact copy of the
319 instrument shall be provided to the surrogate.

320 (3) A document designating a health care surrogate may also
321 designate an alternate surrogate provided the designation is
322 explicit. The alternate surrogate may assume his or her duties
323 as surrogate for the principal if the original surrogate is not
324 willing, able, or reasonably available ~~unwilling or unable~~ to
325 perform his or her duties. The principal's failure to designate
326 an alternate surrogate shall not invalidate the designation of a
327 surrogate.

328 (4) If neither the designated surrogate nor the designated
329 alternate surrogate is willing, able, or reasonably available
330 ~~able or willing~~ to make health care decisions on behalf of the



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331 principal and in accordance with the principal's instructions,
332 the health care facility may seek the appointment of a proxy
333 pursuant to part IV.

334 (6) A principal may stipulate in the document that the
335 authority of the surrogate to receive health information or make
336 health care decisions or both is exercisable immediately without
337 the necessity for a determination of incapacity as provided in
338 s. 765.204.

339 Section 9. Section 765.203, Florida Statutes, is amended to
340 read:

341 765.203 Suggested form of designation.—A written
342 designation of a health care surrogate executed pursuant to this
343 chapter may, but need not be, in the following form:

344
345 DESIGNATION OF HEALTH CARE SURROGATE

346
347 I, ...(name)..., designate as my health care surrogate under s.
348 765.202, Florida Statutes:

349
350 Name: ...(name of health care surrogate)...

351 Address: ...(address)...

352 Phone: ...(telephone)...

353
354 If my health care surrogate is not willing, able, or reasonably
355 available to perform his or her duties, I designate as my
356 alternate health care surrogate:

357
358 Name: ...(name of alternate health care surrogate)...

359 Address: ...(address)...



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360 Phone: ... (telephone) ...

361

362 INSTRUCTIONS FOR HEALTH CARE

363

364 I authorize my health care surrogate to:

365 ...(Initial here)... Receive any of my health information,
366 whether oral or recorded in any form or medium, that:

367 1. Is created or received by a health care provider, health
368 care facility, health plan, public health authority, employer,
369 life insurer, school or university, or health care
370 clearinghouse; and

371 2. Relates to my past, present, or future physical or
372 mental health or condition; the provision of health care to me;
373 or the past, present, or future payment for the provision of
374 health care to me.

375 I further authorize my health care surrogate to:

376 ...(Initial here)... Make all health care decisions for me,
377 which means he or she has the authority to:

378 1. Provide informed consent, refusal of consent, or
379 withdrawal of consent to any and all of my health care,
380 including life-prolonging procedures.

381 2. Apply on my behalf for private, public, government, or
382 veterans' benefits to defray the cost of health care.

383 3. Access my health information reasonably necessary for
384 the health care surrogate to make decisions involving my health
385 care and to apply for benefits for me.

386 4. Decide to make an anatomical gift pursuant to part V of
387 chapter 765, Florida Statutes.

388 ...(Initial here)... Specific instructions and



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389 restrictions:
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391

392
393 To the extent I am capable of understanding, my health care
394 surrogate shall keep me reasonably informed of all decisions
395 that he or she has made on my behalf and matters concerning me.

396
397 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY
398 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA
399 STATUTES.

400
401 PURSUANT TO SECTION 765.104, FLORIDA STATUTES, I UNDERSTAND THAT
402 I MAY, AT ANY TIME WHILE I RETAIN MY CAPACITY, REVOKE OR AMEND
403 THIS DESIGNATION BY:

404 (1) SIGNING A WRITTEN AND DATED INSTRUMENT WHICH EXPRESSES
405 MY INTENT TO AMEND OR REVOKE THIS DESIGNATION;

406 (2) PHYSICALLY DESTROYING THIS DESIGNATION THROUGH MY OWN
407 ACTION OR BY THAT OF ANOTHER PERSON IN MY PRESENCE AND UNDER MY
408 DIRECTION;

409 (3) VERBALLY EXPRESSING MY INTENTION TO AMEND OR REVOKE
410 THIS DESIGNATION; OR

411 (4) SIGNING A NEW DESIGNATION THAT IS MATERIALLY DIFFERENT
412 FROM THIS DESIGNATION.

413
414 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY
415 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN
416 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE
417 FOLLOWING BOXES:



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IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
AUTHORITY TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT
IMMEDIATELY.

IF I INITIAL THIS BOX [....], MY HEALTH CARE SURROGATE'S
AUTHORITY TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT
IMMEDIATELY.

SIGNATURES: Sign and date the form here:

...(date)... ..(sign your name)...
...(address)... ..(print your name)...
...(city)... ..(state)...

SIGNATURES OF WITNESSES:

First witness Second witness
...(print name)... ..(print name)...
...(address)... ..(address)...
...(city)... ..(state)... ..(city)... ..(state)...
...(signature of witness)... ..(signature of witness)...
...(date)... ..(date)...

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

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

Name:.....



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447 Address:.....

Zip

..... Code:.....

448

449 Phone:.....

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

452 Name:.....

453 Address:.....

Zip

..... Code:.....

454

455 Phone:.....

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

461 Additional instructions (optional):.....

462

463

464

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

470 Name:.....

471 Name:.....



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474 Signed:.....
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475 Date:.....
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478 Section 10. Section 765.2035, Florida Statutes, is created

479 to read:

480 765.2035 Designation of a health care surrogate for a
481 minor.-

482 (1) A natural guardian as defined in s. 744.301(1), legal
483 custodian, or legal guardian of the person of a minor may
484 designate a competent adult to serve as a surrogate to make
485 health care decisions for the minor. Such designation shall be
486 made by a written document signed by the minor's principal in
487 the presence of two subscribing adult witnesses. If a minor's
488 principal is unable to sign the instrument, the principal may,
489 in the presence of witnesses, direct that another person sign
490 the minor's principal's name as required by this subsection. An
491 exact copy of the instrument shall be provided to the surrogate.

492 (2) The person designated as surrogate may not act as
493 witness to the execution of the document designating the health
494 care surrogate.

495 (3) A document designating a health care surrogate may also
496 designate an alternate surrogate; however, such designation must
497 be explicit. The alternate surrogate may assume his or her



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498 duties as surrogate if the original surrogate is not willing,
499 able, or reasonably available to perform his or her duties. The
500 minor's principal's failure to designate an alternate surrogate
501 does not invalidate the designation.

502 (4) If neither the designated surrogate or the designated
503 alternate surrogate is willing, able, or reasonably available to
504 make health care decisions for the minor on behalf of the
505 minor's principal and in accordance with the minor's principal's
506 instructions, s. 743.0645(2) shall apply as if no surrogate had
507 been designated.

508 (5) A natural guardian as defined in s. 744.301(1), legal
509 custodian, or legal guardian of the person of a minor may
510 designate a separate surrogate to consent to mental health
511 treatment for the minor. However, unless the document
512 designating the health care surrogate expressly states
513 otherwise, the court shall assume that the health care surrogate
514 authorized to make health care decisions for a minor under this
515 chapter is also the minor's principal's choice to make decisions
516 regarding mental health treatment for the minor.

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

522 (7) A written designation of a health care surrogate
523 executed pursuant to this section establishes a rebuttable
524 presumption of clear and convincing evidence of the minor's
525 principal's designation of the surrogate and becomes effective
526 pursuant to s. 743.0645(2) (a).



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527 Section 11. Section 765.2038, Florida Statutes, is created
528 to read:

529 765.2038 Designation of health care surrogate for a minor;
530 suggested form.—A written designation of a health care surrogate
531 for a minor executed pursuant to this chapter may, but need not
532 be, in the following form:

533 DESIGNATION OF HEALTH CARE SURROGATE

534 FOR MINOR

535 I/We, ...(name/names)..., the [....] natural guardian(s)
536 as defined in s. 744.301(1), Florida Statutes; [....] legal
537 custodian(s); [....] legal guardian(s) [check one] of the
538 following minor(s):

539 _____;
540 _____;
541 _____;
542 _____;

543
544 pursuant to s. 765.2035, Florida Statutes, designate the
545 following person to act as my/our surrogate for health care
546 decisions for such minor(s) in the event that I/we am/are not
547 able or reasonably available to provide consent for medical
548 treatment and surgical and diagnostic procedures:

549
550 Name: ...(name)...
551 Address: ...(address)...
552 Zip Code: ...(zip code)...
553 Phone: ...(telephone)...

554
555 If my/our designated health care surrogate for a minor is



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556 not willing, able, or reasonably available to perform his or her
557 duties, I/we designate the following person as my/our alternate
558 health care surrogate for a minor:

559

560 Name: ... (name) ...

561 Address: ... (address) ...

562 Zip Code: ... (zip code) ...

563 Phone: ... (telephone) ...

564

565 I/We authorize and request all physicians, hospitals, or
566 other providers of medical services to follow the instructions
567 of my/our surrogate or alternate surrogate, as the case may be,
568 at any time and under any circumstances whatsoever, with regard
569 to medical treatment and surgical and diagnostic procedures for
570 a minor, provided the medical care and treatment of any minor is
571 on the advice of a licensed physician.

572

573 I/We fully understand that this designation will permit
574 my/our designee to make health care decisions for a minor and to
575 provide, withhold, or withdraw consent on my/our behalf, to
576 apply for public benefits to defray the cost of health care, and
577 to authorize the admission or transfer of a minor to or from a
578 health care facility.

579

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

583

584 Name: ... (name) ...



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585 Name: ... (name)...

586

587 Signed: ... (signature)...

588 Date: ... (date)...

589

590 WITNESSES:

591 1. ... (witness)...

592 2. ... (witness)...

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

595 765.204 Capacity of principal; procedure.—

596 (1) A principal is presumed to be capable of making health
597 care decisions for herself or himself unless she or he is
598 determined to be incapacitated. Incapacity may not be inferred
599 from the person's voluntary or involuntary hospitalization for
600 mental illness or from her or his intellectual disability.

601 (2) If a principal's capacity to make health care decisions
602 for herself or himself or provide informed consent is in
603 question, the primary or attending physician shall evaluate the
604 principal's capacity and, if the evaluating physician concludes
605 that the principal lacks capacity, enter that evaluation in the
606 principal's medical record. If the evaluating ~~attending~~
607 physician has a question as to whether the principal lacks
608 capacity, another physician shall also evaluate the principal's
609 capacity, and if the second physician agrees that the principal
610 lacks the capacity to make health care decisions or provide
611 informed consent, the health care facility shall enter both
612 physician's evaluations in the principal's medical record. If
613 the principal has designated a health care surrogate or has



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614 delegated authority to make health care decisions to an attorney
615 in fact under a durable power of attorney, the health care
616 facility shall notify such surrogate or attorney in fact in
617 writing that her or his authority under the instrument has
618 commenced, as provided in chapter 709 or s. 765.203. If an
619 attending physician determines that the principal lacks
620 capacity, the hospital in which the attending physician made
621 such a determination shall notify the principal's primary
622 physician of the determination.

623 (3) The surrogate's authority shall commence upon a
624 determination under subsection (2) that the principal lacks
625 capacity, and such authority shall remain in effect until a
626 determination that the principal has regained such capacity.
627 Upon commencement of the surrogate's authority, a surrogate who
628 is not the principal's spouse shall notify the principal's
629 spouse or adult children of the principal's designation of the
630 surrogate. In the event the primary attending physician
631 determines that the principal has regained capacity, the
632 authority of the surrogate shall cease, but shall recommence if
633 the principal subsequently loses capacity as determined pursuant
634 to this section.

635 (4) Notwithstanding subsections (2) and (3), if the
636 principal has designated a health care surrogate and has
637 stipulated that the authority of the surrogate is to take effect
638 immediately, or has appointed an agent under a durable power of
639 attorney as provided in chapter 709 to make health care
640 decisions for the principal, the health care facility shall
641 notify such surrogate or agent in writing when a determination
642 of incapacity has been entered into the principal's medical



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643 record.

644 ~~(5)-(4)~~ A determination made pursuant to this section that a
645 principal lacks capacity to make health care decisions shall not
646 be construed as a finding that a principal lacks capacity for
647 any other purpose.

648 ~~(6)-(5)~~ If ~~In the event~~ the surrogate is required to consent
649 to withholding or withdrawing life-prolonging procedures, ~~the~~
650 ~~provisions of part III applies shall apply.~~

651 Section 13. Paragraph (d) of subsection (1) and subsection
652 (2) of section 765.205, Florida Statutes, are amended to read:

653 765.205 Responsibility of the surrogate.—

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

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

659 (2) The surrogate may authorize the release of health
660 ~~information and medical records~~ to appropriate persons to ensure
661 the continuity of the principal's health care and may authorize
662 the admission, discharge, or transfer of the principal to or
663 from a health care facility or other facility or program
664 licensed under chapter 400 or chapter 429.

665 Section 14. Subsection (2) of section 765.302, Florida
666 Statutes, is amended to read:

667 765.302 Procedure for making a living will; notice to
668 physician.—

669 (2) It is the responsibility of the principal to provide
670 for notification to her or his primary attending or treating
671 physician that the living will has been made. In the event the



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672 principal is physically or mentally incapacitated at the time
673 the principal is admitted to a health care facility, any other
674 person may notify the physician or health care facility of the
675 existence of the living will. A primary ~~An attending or treating~~
676 physician or health care facility which is so notified shall
677 promptly make the living will or a copy thereof a part of the
678 principal's medical records.

679 Section 15. Subsection (1) of section 765.303, Florida
680 Statutes, is amended to read:

681 765.303 Suggested form of a living will.—

682 (1) A living will may, BUT NEED NOT, be in the following
683 form:

684 Living Will

685 Declaration made this day of, ...(year)..., I,
686, willfully and voluntarily make known my desire that my
687 dying not be artificially prolonged under the circumstances set
688 forth below, and I do hereby declare that, if at any time I am
689 incapacitated and

690 ...(initial)... I have a terminal condition

691 or ...(initial)... I have an end-stage condition

692 or ...(initial)... I am in a persistent vegetative state

693 and if my primary ~~attending or treating~~ physician and another
694 consulting physician have determined that there is no reasonable
695 medical probability of my recovery from such condition, I direct
696 that life-prolonging procedures be withheld or withdrawn when
697 the application of such procedures would serve only to prolong
698 artificially the process of dying, and that I be permitted to
699 die naturally with only the administration of medication or the
700 performance of any medical procedure deemed necessary to provide



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701 me with comfort care or to alleviate pain.

702 It is my intention that this declaration be honored by my
703 family and physician as the final expression of my legal right
704 to refuse medical or surgical treatment and to accept the
705 consequences for such refusal.

706 In the event that I have been determined to be unable to
707 provide express and informed consent regarding the withholding,
708 withdrawal, or continuation of life-prolonging procedures, I
709 wish to designate, as my surrogate to carry out the provisions
710 of this declaration:

711
712 Name:.....
713 Address:.....
Zip
..... Code:.....

714
715 Phone:.....

716 I understand the full import of this declaration, and I am
717 emotionally and mentally competent to make this declaration.

718 Additional Instructions (optional):
719
720
721

722 (Signed)
723Witness....
724Address....
725Phone....
726Witness....
727Address....



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728 Phone....

729 Section 16. Subsection (1) of section 765.304, Florida
730 Statutes, is amended to read:

731 765.304 Procedure for living will.—

732 (1) If a person has made a living will expressing his or
733 her desires concerning life-prolonging procedures, but has not
734 designated a surrogate to execute his or her wishes concerning
735 life-prolonging procedures or designated a surrogate under part
736 II, the person's primary ~~attending~~ physician may proceed as
737 directed by the principal in the living will. In the event of a
738 dispute or disagreement concerning the primary ~~attending~~
739 physician's decision to withhold or withdraw life-prolonging
740 procedures, the primary ~~attending~~ physician shall not withhold
741 or withdraw life-prolonging procedures pending review under s.
742 765.105. If a review of a disputed decision is not sought within
743 7 days following the primary ~~attending~~ physician's decision to
744 withhold or withdraw life-prolonging procedures, the primary
745 ~~attending~~ physician may proceed in accordance with the
746 principal's instructions.

747 Section 17. Section 765.306, Florida Statutes, is amended
748 to read:

749 765.306 Determination of patient condition.—In determining
750 whether the patient has a terminal condition, has an end-stage
751 condition, or is in a persistent vegetative state or may recover
752 capacity, or whether a medical condition or limitation referred
753 to in an advance directive exists, the patient's primary
754 ~~attending or treating~~ physician and at least one other
755 consulting physician must separately examine the patient. The
756 findings of each such examination must be documented in the



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757 patient's medical record and signed by each examining physician
758 before life-prolonging procedures may be withheld or withdrawn.

759 Section 18. Section 765.404, Florida Statutes, is amended
760 to read:

761 765.404 Persistent vegetative state.—For persons in a
762 persistent vegetative state, as determined by the person's
763 primary attending physician in accordance with currently
764 accepted medical standards, who have no advance directive and
765 for whom there is no evidence indicating what the person would
766 have wanted under such conditions, and for whom, after a
767 reasonably diligent inquiry, no family or friends are available
768 or willing to serve as a proxy to make health care decisions for
769 them, life-prolonging procedures may be withheld or withdrawn
770 under the following conditions:

771 (1) The person has a judicially appointed guardian
772 representing his or her best interest with authority to consent
773 to medical treatment; and

774 (2) The guardian and the person's primary attending
775 physician, in consultation with the medical ethics committee of
776 the facility where the patient is located, conclude that the
777 condition is permanent and that there is no reasonable medical
778 probability for recovery and that withholding or withdrawing
779 life-prolonging procedures is in the best interest of the
780 patient. If there is no medical ethics committee at the
781 facility, the facility must have an arrangement with the medical
782 ethics committee of another facility or with a community-based
783 ethics committee approved by the Florida Bio-ethics Network. The
784 ethics committee shall review the case with the guardian, in
785 consultation with the person's primary attending physician, to



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786 determine whether the condition is permanent and there is no
787 reasonable medical probability for recovery. The individual
788 committee members and the facility associated with an ethics
789 committee shall not be held liable in any civil action related
790 to the performance of any duties required in this subsection.

791 Section 19. Paragraph (c) of subsection (1) of section
792 765.516, Florida Statutes, is amended to read:

793 765.516 Donor amendment or revocation of anatomical gift.—

794 (1) A donor may amend the terms of or revoke an anatomical
795 gift by:

796 (c) A statement made during a terminal illness or injury
797 addressed to the primary ~~an attending~~ physician, who must
798 communicate the revocation of the gift to the procurement
799 organization.

800 Section 20. This act shall take effect October 1, 2015.

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

802 And the title is amended as follows:

803 Delete everything before the enacting clause
804 and insert:

805 A bill to be entitled
806 An act relating to health care representatives;
807 amending s. 743.0645, F.S.; conforming provisions to
808 changes made by the act; amending s. 765.101, F.S.;
809 defining terms for purposes of provisions relating to
810 health care advanced directives; revising definitions
811 to conform to changes made by the act; amending s.
812 765.102, F.S.; revising legislative intent to include
813 reference to surrogate authority that is not dependent
814 on a determination of incapacity; amending s. 765.104,



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815 F.S.; conforming provisions to changes made by the
816 act; amending s. 765.105, F.S.; conforming provisions
817 to changes made by the act; providing an exception for
818 a patient who has designated a surrogate to make
819 health care decisions and receive health information
820 without a determination of incapacity being required;
821 amending ss. 765.1103 and 765.1105, F.S.; conforming
822 provisions to changes made by the act; amending s.
823 765.202, F.S.; revising provisions relating to the
824 designation of health care surrogates; amending s.
825 765.203, F.S.; revising the suggested form for
826 designation of a health care surrogate; creating s.
827 765.2035, F.S.; providing for the designation of
828 health care surrogates for minors; providing for
829 designation of an alternate surrogate; providing for
830 decisionmaking if neither the designated surrogate nor
831 the designated alternate surrogate is willing, able,
832 or reasonably available to make health care decisions
833 for the minor on behalf of the minor's principal;
834 authorizing designation of a separate surrogate to
835 consent to mental health treatment for a minor;
836 providing that the health care surrogate authorized to
837 make health care decisions for a minor is also the
838 minor's principal's choice to make decisions regarding
839 mental health treatment for the minor unless provided
840 otherwise; providing that a written designation of a
841 health care surrogate establishes a rebuttable
842 presumption of clear and convincing evidence of the
843 minor's principal's designation of the surrogate;



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844 creating s. 765.2038, F.S.; providing a suggested form
845 for the designation of a health care surrogate for a
846 minor; amending s. 765.204, F.S.; conforming
847 provisions to changes made by the act; providing for
848 notification of incapacity of a principal; amending s.
849 765.205, F.S.; conforming provisions to changes made
850 by the act; amending ss. 765.302, 765.303, 765.304,
851 765.306, 765.404, and 765.516, F.S.; conforming
852 provisions to changes made by the act; providing an
853 effective date.