

By Senator Joyner

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1                   A bill to be entitled  
2       An act relating to health care representatives;  
3       amending s. 743.0645, F.S.; conforming provisions to  
4       changes made by the act; amending s. 765.101, F.S.;  
5       defining terms for purposes of provisions relating to  
6       health care advanced directives; revising definitions  
7       to conform to changes made by the act; amending s.  
8       765.102, F.S.; revising legislative intent to include  
9       reference to surrogate authority that is not dependent  
10      on a determination of incapacity; amending s. 765.104,  
11      F.S.; conforming provisions to changes made by the  
12      act; amending s. 765.105, F.S.; conforming provisions  
13      to changes made by the act; providing an exception for  
14      a patient who has designated a surrogate to make  
15      health care decisions and receive health information  
16      without a determination of incapacity being required;  
17      amending ss. 765.1103 and 765.1105, F.S.; conforming  
18      provisions to changes made by the act; amending s.  
19      765.202, F.S.; revising provisions relating to the  
20      designation of health care surrogates; amending s.  
21      765.203, F.S.; revising the suggested form for  
22      designation of a health care surrogate; creating s.  
23      765.2035, F.S.; providing for the designation of  
24      health care surrogates for minors; providing for  
25      designation of an alternate surrogate; providing for  
26      decisionmaking if neither the designated surrogate nor  
27      the designated alternate surrogate is willing, able,  
28      or reasonably available to make health care decisions  
29      for the minor on behalf of the minor's principal;

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30 authorizing designation of a separate surrogate to  
31 consent to mental health treatment for a minor;  
32 providing that the health care surrogate authorized to  
33 make health care decisions for a minor is also the  
34 minor's principal's choice to make decisions regarding  
35 mental health treatment for the minor unless provided  
36 otherwise; providing that a written designation of a  
37 health care surrogate establishes a rebuttable  
38 presumption of clear and convincing evidence of the  
39 minor's principal's designation of the surrogate;  
40 creating s. 765.2038, F.S.; providing a suggested form  
41 for the designation of a health care surrogate for a  
42 minor; amending s. 765.204, F.S.; conforming  
43 provisions to changes made by the act; providing for  
44 notification of incapacity of a principal; amending s.  
45 765.205, F.S.; conforming provisions to changes made  
46 by the act; providing an additional requirement when a  
47 patient has designated a surrogate to make health care  
48 decisions and receive health information, or both,  
49 without a determination of incapacity being required;  
50 amending ss. 765.302, 765.303, 765.304, 765.306,  
51 765.404, and 765.516, F.S.; conforming provisions to  
52 changes made by the act; providing an effective date.

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

55  
56 Section 1. Paragraph (b) of subsection (1) and paragraph  
57 (a) of subsection (2) of section 743.0645, Florida Statutes, are  
58 amended to read:

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59           743.0645 Other persons who may consent to medical care or  
60 treatment of a minor.—

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

62           (b) "Medical care and treatment" includes ordinary and  
63 necessary medical and dental examination and treatment,  
64 including blood testing, preventive care including ordinary  
65 immunizations, tuberculin testing, and well-child care, but does  
66 not include surgery, general anesthesia, provision of  
67 psychotropic medications, or other extraordinary procedures for  
68 which a separate court order, health care surrogate designation  
69 under s. 765.2035 executed after September 30, 2015, power of  
70 attorney executed after July 1, 2001, but before October 1,  
71 2015, or informed consent as provided by law is required, except  
72 as provided in s. 39.407(3).

73           (2) Any of the following persons, in order of priority  
74 listed, may consent to the medical care or treatment of a minor  
75 who is not committed to the Department of Children and Families  
76 or the Department of Juvenile Justice or in their custody under  
77 chapter 39, chapter 984, or chapter 985 when, after a reasonable  
78 attempt, a person who has the power to consent as otherwise  
79 provided by law cannot be contacted by the treatment provider  
80 and actual notice to the contrary has not been given to the  
81 provider by that person:

82           (a) A health care surrogate designated under s. 765.2035  
83 after September 30, 2015, or a person who possesses a power of  
84 attorney to provide medical consent for the minor executed  
85 before October 1, 2015. A health care surrogate designation  
86 under s. 765.2035 executed after September 30, 2015, and a power  
87 of attorney executed after July 1, 2001, but before October 1,

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88 2015, to provide medical consent for a minor includes the power  
89 to consent to medically necessary surgical and general  
90 anesthesia services for the minor unless such services are  
91 excluded by the individual executing the health care surrogate  
92 designation for a minor or power of attorney.

93

94 There shall be maintained in the treatment provider's records of  
95 the minor documentation that a reasonable attempt was made to  
96 contact the person who has the power to consent.

97 Section 2. Section 765.101, Florida Statutes, is amended to  
98 read:

99 765.101 Definitions.—As used in this chapter:

100 (1) "Advance directive" means a witnessed written document  
101 or oral statement in which instructions are given by a principal  
102 or in which the principal's desires are expressed concerning any  
103 aspect of the principal's health care or health information, and  
104 includes, but is not limited to, the designation of a health  
105 care surrogate, a living will, or an anatomical gift made  
106 pursuant to part V of this chapter.

107 ~~(2) "Attending physician" means the primary physician who~~  
108 ~~has responsibility for the treatment and care of the patient.~~

109 (2)(3) "Close personal friend" means any person 18 years of  
110 age or older who has exhibited special care and concern for the  
111 patient, and who presents an affidavit to the health care  
112 facility or to the ~~attending or~~ treating physician stating that  
113 he or she is a friend of the patient; is willing and able to  
114 become involved in the patient's health care; and has maintained  
115 such regular contact with the patient so as to be familiar with  
116 the patient's activities, health, and religious or moral

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117 beliefs.

118 (3)~~(4)~~ "End-stage condition" means an irreversible  
119 condition that is caused by injury, disease, or illness which  
120 has resulted in progressively severe and permanent  
121 deterioration, and which, to a reasonable degree of medical  
122 probability, treatment of the condition would be ineffective.

123 (4) "Health care" means care, services, or supplies related  
124 to the health of an individual and includes, but is not limited  
125 to, preventive, diagnostic, therapeutic, rehabilitative,  
126 maintenance, or palliative care, and counseling, service,  
127 assessment, or procedure with respect to the individual's  
128 physical or mental condition or functional status or that affect  
129 the structure or function of the individual's body.

130 (5) "Health care decision" means:

131 (a) Informed consent, refusal of consent, or withdrawal of  
132 consent to any and all health care, including life-prolonging  
133 procedures and mental health treatment, unless otherwise stated  
134 in the advance directives.

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

137 (c) The right of access to health information ~~all records~~  
138 of the principal reasonably necessary for a health care  
139 surrogate or proxy to make decisions involving health care and  
140 to apply for benefits.

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

143 (6) "Health care facility" means a hospital, nursing home,  
144 hospice, home health agency, or health maintenance organization  
145 licensed in this state, or any facility subject to part I of

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146 chapter 394.

147 (7) "Health care provider" or "provider" means any person  
148 licensed, certified, or otherwise authorized by law to  
149 administer health care in the ordinary course of business or  
150 practice of a profession.

151 (8) "Health information" means any information, whether  
152 oral or recorded in any form or medium, as defined in 45 C.F.R.  
153 s. 160.103 and the Health Insurance Portability and  
154 Accountability Act of 1996, 42 U.S.C. s. 1320d, as amended,  
155 that:

156 (a) Is created or received by a health care provider,  
157 health care facility, health plan, public health authority,  
158 employer, life insurer, school or university, or health care  
159 clearinghouse; and

160 (b) Relates to the past, present, or future physical or  
161 mental health or condition of the principal; the provision of  
162 health care to the principal; or the past, present, or future  
163 payment for the provision of health care to the principal.

164 (9)~~(8)~~ "Incapacity" or "incompetent" means the patient is  
165 physically or mentally unable to communicate a willful and  
166 knowing health care decision. For the purposes of making an  
167 anatomical gift, the term also includes a patient who is  
168 deceased.

169 (10)~~(9)~~ "Informed consent" means consent voluntarily given  
170 by a person after a sufficient explanation and disclosure of the  
171 subject matter involved to enable that person to have a general  
172 understanding of the treatment or procedure and the medically  
173 acceptable alternatives, including the substantial risks and  
174 hazards inherent in the proposed treatment or procedures, and to

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175 make a knowing health care decision without coercion or undue  
176 influence.

177 (11)~~(10)~~ "Life-prolonging procedure" means any medical  
178 procedure, treatment, or intervention, including artificially  
179 provided sustenance and hydration, which sustains, restores, or  
180 supplants a spontaneous vital function. The term does not  
181 include the administration of medication or performance of  
182 medical procedure, when such medication or procedure is deemed  
183 necessary to provide comfort care or to alleviate pain.

184 (12)~~(11)~~ "Living will" or "declaration" means:

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

187 (b) A witnessed oral statement made by the principal  
188 expressing the principal's instructions concerning life-  
189 prolonging procedures.

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

193 (14)~~(12)~~ "Persistent vegetative state" means a permanent  
194 and irreversible condition of unconsciousness in which there is:

195 (a) The absence of voluntary action or cognitive behavior  
196 of any kind.

197 (b) An inability to communicate or interact purposefully  
198 with the environment.

199 (15)~~(13)~~ "Physician" means a person licensed pursuant to  
200 chapter 458 or chapter 459.

201 (16) "Primary physician" means a physician designated by an  
202 individual or the individual's surrogate, proxy, or agent under  
203 a durable power of attorney as provided in chapter 709, to have

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204 primary responsibility for the individual's health care or, in  
205 the absence of a designation or if the designated physician is  
206 not reasonably available, a physician who undertakes the  
207 responsibility.

208 (17)~~(14)~~ "Principal" means a competent adult executing an  
209 advance directive and on whose behalf health care decisions are  
210 to be made or health care information is to be received, or  
211 both.

212 (18)~~(15)~~ "Proxy" means a competent adult who has not been  
213 expressly designated to make health care decisions for a  
214 particular incapacitated individual, but who, nevertheless, is  
215 authorized pursuant to s. 765.401 to make health care decisions  
216 for such individual.

217 (19) "Reasonably available" means readily able to be  
218 contacted without undue effort and willing and able to act in a  
219 timely manner considering the urgency of the patient's health  
220 care needs.

221 (20)~~(16)~~ "Surrogate" means any competent adult expressly  
222 designated by a principal to make health care decisions and to  
223 receive health information. The principal may stipulate whether  
224 the authority of the surrogate to make health care decisions or  
225 to receive health information is exercisable immediately without  
226 the necessity for a determination of incapacity or only upon the  
227 principal's incapacity as provided in s. 765.204 ~~on behalf of~~  
228 ~~the principal upon the principal's incapacity.~~

229 (21)~~(17)~~ "Terminal condition" means a condition caused by  
230 injury, disease, or illness from which there is no reasonable  
231 medical probability of recovery and which, without treatment,  
232 can be expected to cause death.



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233 Section 3. Present subsections (3) through (6) of section  
234 765.102, Florida Statutes, are renumbered as subsections (4)  
235 through (7), respectively, present subsections (2) and (3) are  
236 amended, and a new subsection (3) is added to that section, to  
237 read:

238 765.102 Legislative findings and intent.—

239 (2) To ensure that such right is not lost or diminished by  
240 virtue of later physical or mental incapacity, the Legislature  
241 intends that a procedure be established to allow a person to  
242 plan for incapacity by executing a document or orally  
243 designating another person to direct the course of his or her  
244 health care or receive his or her health information, or both,  
245 ~~medical treatment~~ upon his or her incapacity. Such procedure  
246 should be less expensive and less restrictive than guardianship  
247 and permit a previously incapacitated person to exercise his or  
248 her full right to make health care decisions as soon as the  
249 capacity to make such decisions has been regained.

250 (3) The Legislature also recognizes that some competent  
251 adults may want to receive immediate assistance in making health  
252 care decisions or accessing health information, or both, without  
253 a determination of incapacity. The Legislature intends that a  
254 procedure be established to allow a person to designate a  
255 surrogate to make health care decisions or receive health  
256 information, or both, without the necessity for a determination  
257 of incapacity under this chapter.

258 (4)~~(3)~~ The Legislature recognizes that for some the  
259 administration of life-prolonging medical procedures may result  
260 in only a precarious and burdensome existence. In order to  
261 ensure that the rights and intentions of a person may be

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262 respected even after he or she is no longer able to participate  
263 actively in decisions concerning himself or herself, and to  
264 encourage communication among such patient, his or her family,  
265 and his or her physician, the Legislature declares that the laws  
266 of this state recognize the right of a competent adult to make  
267 an advance directive instructing his or her physician to  
268 provide, withhold, or withdraw life-prolonging procedures, or to  
269 designate another to make the health care ~~treatment~~ decision for  
270 him or her in the event that such person should become  
271 incapacitated and unable to personally direct his or her health  
272 ~~medical~~ care.

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

275 765.104 Amendment or revocation.—

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

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

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

282 (c) By means of an oral expression of intent to amend or  
283 revoke; or

284 (d) By means of a subsequently executed advance directive  
285 that is materially different from a previously executed advance  
286 directive.

287 Section 5. Section 765.105, Florida Statutes, is amended to  
288 read:

289 765.105 Review of surrogate or proxy's decision.—

290 (1) The patient's family, the health care facility, or the

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291 ~~attending~~ physician, or any other interested person who may  
292 reasonably be expected to be directly affected by the surrogate  
293 or proxy's decision concerning any health care decision may seek  
294 expedited judicial intervention pursuant to rule 5.900 of the  
295 Florida Probate Rules, if that person believes:

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

299 (b) ~~(2)~~ The advance directive is ambiguous, or the patient  
300 has changed his or her mind after execution of the advance  
301 directive;

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

305 (d) ~~(4)~~ The surrogate or proxy has failed to discharge  
306 duties, or incapacity or illness renders the surrogate or proxy  
307 incapable of discharging duties;

308 (e) ~~(5)~~ The surrogate or proxy has abused his or her powers;  
309 or

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

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

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

318 765.1103 Pain management and palliative care.—

319 (1) A patient shall be given information concerning pain

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320 management and palliative care when he or she discusses with the  
321 ~~attending or~~ treating physician, or such physician's designee,  
322 the diagnosis, planned course of treatment, alternatives, risks,  
323 or prognosis for his or her illness. If the patient is  
324 incapacitated, the information shall be given to the patient's  
325 health care surrogate or proxy, court-appointed guardian as  
326 provided in chapter 744, or attorney in fact under a durable  
327 power of attorney as provided in chapter 709. The court-  
328 appointed guardian or attorney in fact must have been delegated  
329 authority to make health care decisions on behalf of the  
330 patient.

331 Section 7. Section 765.1105, Florida Statutes, is amended  
332 to read:

333 765.1105 Transfer of a patient.—

334 (1) A health care provider or facility that refuses to  
335 comply with a patient's advance directive, or the treatment  
336 decision of his or her surrogate or proxy, shall make reasonable  
337 efforts to transfer the patient to another health care provider  
338 or facility that will comply with the directive or treatment  
339 decision. This chapter does not require a health care provider  
340 or facility to commit any act which is contrary to the  
341 provider's or facility's moral or ethical beliefs, if the  
342 patient:

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

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

347 (2) A health care provider or facility that is unwilling to  
348 carry out the wishes of the patient or the treatment decision of

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349 his or her surrogate or proxy because of moral or ethical  
350 beliefs must within 7 days either:

351 (a) Transfer the patient to another health care provider or  
352 facility. The health care provider or facility shall pay the  
353 costs for transporting the patient to another health care  
354 provider or facility; or

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

358 Section 8. Subsections (1), (3), and (4) of section  
359 765.202, Florida Statutes, are amended, present subsections (6)  
360 and (7) are renumbered as subsections (7) and (8), respectively,  
361 and a new subsection (6) is added to that section, to read:

362 765.202 Designation of a health care surrogate.-

363 (1) A written document designating a surrogate to make  
364 health care decisions for a principal or receive health  
365 information on behalf of a principal, or both, shall be signed  
366 by the principal in the presence of two subscribing adult  
367 witnesses. A principal unable to sign the instrument may, in the  
368 presence of witnesses, direct that another person sign the  
369 principal's name as required herein. An exact copy of the  
370 instrument shall be provided to the surrogate.

371 (3) A document designating a health care surrogate may also  
372 designate an alternate surrogate provided the designation is  
373 explicit. The alternate surrogate may assume his or her duties  
374 as surrogate for the principal if the original surrogate is not  
375 willing, able, or reasonably available ~~unwilling or unable~~ to  
376 perform his or her duties. The principal's failure to designate  
377 an alternate surrogate shall not invalidate the designation of a

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378 surrogate.

379 (4) If neither the designated surrogate nor the designated  
 380 alternate surrogate is willing, able, or reasonably available  
 381 ~~able or willing~~ to make health care decisions on behalf of the  
 382 principal and in accordance with the principal's instructions,  
 383 the health care facility may seek the appointment of a proxy  
 384 pursuant to part IV.

385 (6) A principal may stipulate in the document that the  
 386 authority of the surrogate to receive health information or make  
 387 health care decisions or both is exercisable immediately without  
 388 the necessity for a determination of incapacity as provided in  
 389 s. 765.204.

390 Section 9. Section 765.203, Florida Statutes, is amended to  
 391 read:

392 765.203 Suggested form of designation.—A written  
 393 designation of a health care surrogate executed pursuant to this  
 394 chapter may, but need not be, in the following form:

396 DESIGNATION OF HEALTH CARE SURROGATE

397  
 398 I, ....(name)...., designate as my health care surrogate under  
 399 s. 765.202, Florida Statutes:

400  
 401 Name: ...(name of health care surrogate)...

402 Address: ...(address)...

403 Phone: ...(telephone)...

404  
 405 If my health care surrogate is not willing, able, or reasonably  
 406 available to perform his or her duties, I designate as my

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407 alternate health care surrogate:

408

409 Name: ... (name of alternate health care surrogate) ...

410 Address: ... (address) ...

411 Phone: ... (telephone) ...

412

413 INSTRUCTIONS FOR HEALTH CARE

414 I authorize my health care surrogate to:

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

417 1. Is created or received by a health care provider, health  
 418 care facility, health plan, public health authority, employer,  
 419 life insurer, school or university, or health care  
 420 clearinghouse; and

421 2. Relates to my past, present, or future physical or  
 422 mental health or condition; the provision of health care to me;  
 423 or the past, present, or future payment for the provision of  
 424 health care to me.

425 I further authorize my health care surrogate to:

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

428 1. Provide informed consent, refusal of consent, or  
 429 withdrawal of consent to any and all of my health care,  
 430 including life-prolonging procedures.

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

433 3. Access my health information reasonably necessary for  
 434 the health care surrogate to make decisions involving my health  
 435 care and to apply for benefits for me.

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

438 ...(Initial here)... Specific instructions and restrictions:.....  
439 .....  
440 .....

441  
442 To the extent I am capable of understanding, my health care  
443 surrogate shall keep me reasonably informed of all decisions  
444 that he or she has made on my behalf and matters concerning me.

445  
446 THIS HEALTH CARE SURROGATE DESIGNATION IS NOT AFFECTED BY MY  
447 SUBSEQUENT INCAPACITY EXCEPT AS PROVIDED IN CHAPTER 765, FLORIDA  
448 STATUTES.

449  
450 MY HEALTH CARE SURROGATE'S AUTHORITY BECOMES EFFECTIVE WHEN MY  
451 PRIMARY PHYSICIAN DETERMINES THAT I AM UNABLE TO MAKE MY OWN  
452 HEALTH CARE DECISIONS UNLESS I INITIAL EITHER OR BOTH OF THE  
453 FOLLOWING BOXES:

454  
455 IF I INITIAL THIS BOX [ ], MY HEALTH CARE SURROGATE'S AUTHORITY  
456 TO RECEIVE MY HEALTH INFORMATION TAKES EFFECT IMMEDIATELY.

457  
458 IF I INITIAL THIS BOX [ ], MY HEALTH CARE SURROGATE'S AUTHORITY  
459 TO MAKE HEALTH CARE DECISIONS FOR ME TAKES EFFECT IMMEDIATELY.

460  
461 SIGNATURES: Sign and date the form here:  
462 ...(date)... ...(sign your name)...  
463 ...(address)... ...(print your name)...  
464 ...(city)... ...(state)...



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SIGNATURES OF WITNESSES:

<u>First witness</u>	<u>Second witness</u>
<u>... (print name) ...</u>	<u>... (print name) ...</u>
<u>... (address) ...</u>	<u>... (address) ...</u>
<u>... (city) ...</u>	<u>... (city) ...</u>
<u>... (state) ...</u>	<u>... (state) ...</u>
<u>... (signature of witness) ...</u>	<u>... (signature of witness) ...</u>
<u>... (date) ...</u>	<u>... (date) ...</u>
<u>Name:..... (Last)..... (First)..... (Middle Initial).....</u>	

~~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:.....~~

~~Address:.....~~

~~Zip~~

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

~~Phone:.....~~

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

~~Name:.....~~

~~Address:.....~~

~~Zip~~

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

~~Phone:.....~~

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

495 Additional instructions (optional):.....  
 496 .....  
 497 .....  
 498 .....

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

504 Name:.....  
 505 Name:.....  
 506 .....  
 507 .....  
 508 Signed:.....  
 509 Date:.....

Witnesse

s: 1.....

2.....

512 Section 10. Section 765.2035, Florida Statutes, is created  
 513 to read:

514 765.2035 Designation of a health care surrogate for a  
 515 minor.-

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516       (1) A natural guardian as defined in s. 744.301(1), legal  
517 custodian, or legal guardian of the person of a minor may  
518 designate a competent adult to serve as a surrogate to make  
519 health care decisions for the minor. Such designation shall be  
520 made by a written document signed by the minor's principal in  
521 the presence of two subscribing adult witnesses. If a minor's  
522 principal is unable to sign the instrument, the principal may,  
523 in the presence of witnesses, direct that another person sign  
524 the minor's principal's name as required by this subsection. An  
525 exact copy of the instrument shall be provided to the surrogate.

526       (2) The person designated as surrogate may not act as  
527 witness to the execution of the document designating the health  
528 care surrogate.

529       (3) A document designating a health care surrogate may also  
530 designate an alternate surrogate; however, such designation must  
531 be explicit. The alternate surrogate may assume his or her  
532 duties as surrogate if the original surrogate is not willing,  
533 able, or reasonably available to perform his or her duties. The  
534 minor's principal's failure to designate an alternate surrogate  
535 does not invalidate the designation.

536       (4) If neither the designated surrogate or the designated  
537 alternate surrogate is willing, able, or reasonably available to  
538 make health care decisions for the minor on behalf of the  
539 minor's principal and in accordance with the minor's principal's  
540 instructions, s. 743.0645(2) shall apply as if no surrogate had  
541 been designated.

542       (5) A natural guardian as defined in s. 744.301(1), legal  
543 custodian, or legal guardian of the person of a minor may  
544 designate a separate surrogate to consent to mental health

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545 treatment for the minor. However, unless the document  
 546 designating the health care surrogate expressly states  
 547 otherwise, the court shall assume that the health care surrogate  
 548 who is authorized to make health care decisions for a minor  
 549 under this chapter is also the minor's principal's choice to  
 550 make decisions regarding mental health treatment for the minor.

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

556 (7) A written designation of a health care surrogate  
 557 executed pursuant to this section establishes a rebuttable  
 558 presumption of clear and convincing evidence of the minor's  
 559 principal's designation of the surrogate and becomes effective  
 560 pursuant to s. 743.0645(2)(a).

561 Section 11. Section 765.2038, Florida Statutes, is created  
 562 to read:

563 765.2038 Designation of health care surrogate for a minor;  
 564 suggested form.—A written designation of a health care surrogate  
 565 for a minor executed pursuant to this chapter may, BUT NEED NOT,  
 566 be, in the following form:

567 DESIGNATION OF HEALTH CARE SURROGATE

568 FOR MINOR

569 I/We, ...(name/names)..., the [....] natural guardian(s)  
 570 as defined in s. 744.301(1), Florida Statutes; [....] legal  
 571 custodian(s); [....] legal guardian(s) [check one] of the  
 572 following minor(s):  
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574 .....;  
 575 .....;  
 576 .....,

577  
 578 pursuant to s. 765.2035, Florida Statutes, designate the  
 579 following person to act as my/our surrogate for health care  
 580 decisions for such minor(s) in the event that I/we am/are not  
 581 able or reasonably available to provide consent for medical  
 582 treatment and surgical and diagnostic procedures:

583  
 584 Name: ...(name)...  
 585 Address: ...(address)...  
 586 Zip Code: ...(zip code)...  
 587 Phone: ...(telephone)...

588  
 589 If my/our designated health care surrogate for a minor is  
 590 not willing, able, or reasonably available to perform his or her  
 591 duties, I/we designate the following person as my/our alternate  
 592 health care surrogate for a minor:

593  
 594 Name: ...(name)...  
 595 Address: ...(address)...  
 596 Zip Code: ...(zip code)...  
 597 Phone: ...(telephone)...

598  
 599 I/We authorize and request all physicians, hospitals, or  
 600 other providers of medical services to follow the instructions  
 601 of my/our surrogate or alternate surrogate, as the case may be,  
 602 at any time and under any circumstances whatsoever, with regard

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603 to medical treatment and surgical and diagnostic procedures for  
 604 a minor, provided the medical care and treatment of any minor is  
 605 on the advice of a licensed physician.

606  
 607 I/We fully understand that this designation will permit  
 608 my/our designee to make health care decisions for a minor and to  
 609 provide, withhold, or withdraw consent on my/our behalf, to  
 610 apply for public benefits to defray the cost of health care, and  
 611 to authorize the admission or transfer of a minor to or from a  
 612 health care facility.

613  
 614 I/We will notify and send a copy of this document to the  
 615 following person(s) other than my/our surrogate, so that they  
 616 may know the identity of my/our surrogate:

617  
 618 Name: ... (name) ...

619 Name: ... (name) ...

620  
 621 Signed: ... (signature) ...

622 Date: ... (date) ...

623  
 624 WITNESSES:

625 1. ... (witness) ...

626 2. ... (witness) ...

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

629 765.204 Capacity of principal; procedure.—

630 (1) A principal is presumed to be capable of making health  
 631 care decisions for herself or himself unless she or he is

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632 determined to be incapacitated. Incapacity may not be inferred  
633 from the person's voluntary or involuntary hospitalization for  
634 mental illness or from her or his intellectual disability.

635 (2) If a principal's capacity to make health care decisions  
636 for herself or himself or provide informed consent is in  
637 question, the ~~attending~~ physician shall evaluate the principal's  
638 capacity and, if the physician concludes that the principal  
639 lacks capacity, enter that evaluation in the principal's medical  
640 record. If the ~~attending~~ physician has a question as to whether  
641 the principal lacks capacity, another physician shall also  
642 evaluate the principal's capacity, and if the second physician  
643 agrees that the principal lacks the capacity to make health care  
644 decisions or provide informed consent, the health care facility  
645 shall enter both physician's evaluations in the principal's  
646 medical record. If the principal has designated a health care  
647 surrogate or has delegated authority to make health care  
648 decisions to an attorney in fact under a durable power of  
649 attorney, the health care facility shall notify such surrogate  
650 or attorney in fact in writing that her or his authority under  
651 the instrument has commenced, as provided in chapter 709 or s.  
652 765.203.

653 (3) The surrogate's authority shall commence upon a  
654 determination under subsection (2) that the principal lacks  
655 capacity, and such authority shall remain in effect until a  
656 determination that the principal has regained such capacity.  
657 Upon commencement of the surrogate's authority, a surrogate who  
658 is not the principal's spouse shall notify the principal's  
659 spouse or adult children of the principal's designation of the  
660 surrogate. In the event the ~~attending~~ physician determines that

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661 the principal has regained capacity, the authority of the  
662 surrogate shall cease, but shall recommence if the principal  
663 subsequently loses capacity as determined pursuant to this  
664 section.

665 (4) Notwithstanding subsections (2) and (3), if the  
666 principal has designated a health care surrogate and has  
667 stipulated that the authority of the surrogate is to take effect  
668 immediately, or has appointed an agent under a durable power of  
669 attorney as provided in chapter 709 to make health care  
670 decisions for the principal, the health care facility shall  
671 notify such surrogate or agent in writing when a determination  
672 of incapacity has been entered into the principal's medical  
673 record.

674 (5)~~(4)~~ A determination made pursuant to this section that a  
675 principal lacks capacity to make health care decisions shall not  
676 be construed as a finding that a principal lacks capacity for  
677 any other purpose.

678 (6)~~(5)~~ ~~If In the event~~ the surrogate is required to consent  
679 to withholding or withdrawing life-prolonging procedures, ~~the~~  
680 ~~provisions of part III applies shall apply.~~

681 Section 13. Section 765.205, Florida Statutes, is amended  
682 to read:

683 765.205 Responsibility of the surrogate.—

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

687 (a) Have authority to act for the principal and to make all  
688 health care decisions for the principal during the principal's  
689 incapacity.



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690 (b) Consult expeditiously with appropriate health care  
691 providers to provide informed consent, and make only health care  
692 decisions for the principal which he or she believes the  
693 principal would have made under the circumstances if the  
694 principal were capable of making such decisions. If there is no  
695 indication of what the principal would have chosen, the  
696 surrogate may consider the patient's best interest in deciding  
697 that proposed treatments are to be withheld or that treatments  
698 currently in effect are to be withdrawn.

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

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

704 (e) Apply for public benefits, such as Medicare and  
705 Medicaid, for the principal and have access to information  
706 regarding the principal's income and assets and banking and  
707 financial records to the extent required to make application. A  
708 health care provider or facility may not, however, make such  
709 application a condition of continued care if the principal, if  
710 capable, would have refused to apply.

711 (2) The surrogate may authorize the release of health  
712 information ~~and medical records~~ to appropriate persons to ensure  
713 the continuity of the principal's health care and may authorize  
714 the admission, discharge, or transfer of the principal to or  
715 from a health care facility or other facility or program  
716 licensed under chapter 400 or chapter 429.

717 (3) Notwithstanding subsections (1) and (2), if the  
718 principal has designated a health care surrogate and has

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719 stipulated that the authority of the surrogate is to take effect  
720 immediately, or has appointed an agent under a durable power of  
721 attorney as provided in chapter 709 to make health care  
722 decisions for the principal, the fundamental right of self-  
723 determination of every competent adult regarding his or her  
724 health care decisions shall be controlling. Before implementing  
725 a health care decision made for a principal who is not  
726 incapacitated, the primary physician, another physician, a  
727 health care provider, or a health care facility, if possible,  
728 must promptly communicate to the principal the decision made and  
729 the identity of the person making the decision.

730 (4)~~(3)~~ If, after the appointment of a surrogate, a court  
731 appoints a guardian, the surrogate shall continue to make health  
732 care decisions for the principal, unless the court has modified  
733 or revoked the authority of the surrogate pursuant to s.  
734 744.3115. The surrogate may be directed by the court to report  
735 the principal's health care status to the guardian.

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

738 765.302 Procedure for making a living will; notice to  
739 physician.—

740 (2) It is the responsibility of the principal to provide  
741 for notification to her or his ~~attending or~~ treating physician  
742 that the living will has been made. In the event the principal  
743 is physically or mentally incapacitated at the time the  
744 principal is admitted to a health care facility, any other  
745 person may notify the physician or health care facility of the  
746 existence of the living will. A ~~An attending or~~ treating  
747 physician or health care facility which is so notified shall

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748 promptly make the living will or a copy thereof a part of the  
749 principal's medical records.

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

752 765.303 Suggested form of a living will.—

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

755 Living Will

756 Declaration made this .... day of ....., ...(year)..., I,  
757 ....., willfully and voluntarily make known my desire that my  
758 dying not be artificially prolonged under the circumstances set  
759 forth below, and I do hereby declare that, if at any time I am  
760 incapacitated and

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

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

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

764

765 and if my ~~attending~~ or treating physician and another consulting  
766 physician have determined that there is no reasonable medical  
767 probability of my recovery from such condition, I direct that  
768 life-prolonging procedures be withheld or withdrawn when the  
769 application of such procedures would serve only to prolong  
770 artificially the process of dying, and that I be permitted to  
771 die naturally with only the administration of medication or the  
772 performance of any medical procedure deemed necessary to provide  
773 me with comfort care or to alleviate pain.

774 It is my intention that this declaration be honored by my  
775 family and physician as the final expression of my legal right  
776 to refuse medical or surgical treatment and to accept the

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777 consequences for such refusal.

778 In the event that I have been determined to be unable to  
779 provide express and informed consent regarding the withholding,  
780 withdrawal, or continuation of life-prolonging procedures, I  
781 wish to designate, as my surrogate to carry out the provisions  
782 of this declaration:

783  
784 Name:.....

785 Address:.....

Zip

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

786  
787 Phone:.....

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

790 Additional Instructions (optional):  
791 .....  
792 .....  
793 .....

794 ....(Signed)....

795 ....Witness....

796 ....Address....

797 ....Phone....

798 ....Witness....

799 ....Address....

800 ....Phone....

801  
802 Section 16. Subsection (1) of section 765.304, Florida  
803 Statutes, is amended to read:

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804 765.304 Procedure for living will.—

805 (1) If a person has made a living will expressing his or  
806 her desires concerning life-prolonging procedures, but has not  
807 designated a surrogate to execute his or her wishes concerning  
808 life-prolonging procedures or designated a surrogate under part  
809 II, the person's ~~attending~~ physician may proceed as directed by  
810 the principal in the living will. In the event of a dispute or  
811 disagreement concerning the ~~attending~~ physician's decision to  
812 withhold or withdraw life-prolonging procedures, the ~~attending~~  
813 physician shall not withhold or withdraw life-prolonging  
814 procedures pending review under s. 765.105. If a review of a  
815 disputed decision is not sought within 7 days following the  
816 ~~attending~~ physician's decision to withhold or withdraw life-  
817 prolonging procedures, the ~~attending~~ physician may proceed in  
818 accordance with the principal's instructions.

819 Section 17. Section 765.306, Florida Statutes, is amended  
820 to read:

821 765.306 Determination of patient condition.—In determining  
822 whether the patient has a terminal condition, has an end-stage  
823 condition, or is in a persistent vegetative state or may recover  
824 capacity, or whether a medical condition or limitation referred  
825 to in an advance directive exists, the patient's ~~attending or~~  
826 treating physician and at least one other consulting physician  
827 must separately examine the patient. The findings of each such  
828 examination must be documented in the patient's medical record  
829 and signed by each examining physician before life-prolonging  
830 procedures may be withheld or withdrawn.

831 Section 18. Section 765.404, Florida Statutes, is amended  
832 to read:

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833           765.404 Persistent vegetative state.—For persons in a  
834 persistent vegetative state, as determined by the person's  
835 ~~attending~~ physician in accordance with currently accepted  
836 medical standards, who have no advance directive and for whom  
837 there is no evidence indicating what the person would have  
838 wanted under such conditions, and for whom, after a reasonably  
839 diligent inquiry, no family or friends are available or willing  
840 to serve as a proxy to make health care decisions for them,  
841 life-prolonging procedures may be withheld or withdrawn under  
842 the following conditions:

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

846           (2) The guardian and the person's ~~attending~~ physician, in  
847 consultation with the medical ethics committee of the facility  
848 where the patient is located, conclude that the condition is  
849 permanent and that there is no reasonable medical probability  
850 for recovery and that withholding or withdrawing life-prolonging  
851 procedures is in the best interest of the patient. If there is  
852 no medical ethics committee at the facility, the facility must  
853 have an arrangement with the medical ethics committee of another  
854 facility or with a community-based ethics committee approved by  
855 the Florida Bio-ethics Network. The ethics committee shall  
856 review the case with the guardian, in consultation with the  
857 person's ~~attending~~ physician, to determine whether the condition  
858 is permanent and there is no reasonable medical probability for  
859 recovery. The individual committee members and the facility  
860 associated with an ethics committee shall not be held liable in  
861 any civil action related to the performance of any duties

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862 required in this subsection.

863 Section 19. Paragraph (c) of subsection (1) of section  
864 765.516, Florida Statutes, is amended to read:

865 765.516 Donor amendment or revocation of anatomical gift.—

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

868 (c) A statement made during a terminal illness or injury  
869 addressed to a treating ~~an attending~~ physician, who must  
870 communicate the revocation of the gift to the procurement  
871 organization.

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